

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR. :
PLAINTIFF, : Case No. 1:14-CV-42 (WLS)
:
V. : March 14, 2014
: Albany, Georgia
SUMTER COUNTY :
BOARD OF ELECTIONS, :
DEFENDANT :

PRELIMINARY INJUNCTION HEARING

BEFORE THE HONORABLE W. LOUIS SANDS
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

FOR THE PLAINTIFF: MATHIS KEARSE WRIGHT, JR.
PRO SE LITIGANT

FOR THE DEFENDANT: WILLIAM DALLAS NESMITH, JR.
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P R O C E E D I N G S

March 14, 2014

THE COURT: All right. Good morning.

COUNSEL: Good morning.

THE COURT: All right. We are here in the matter of Mathis Kearse Wright, Jr. versus Sumter County Board of Elections and Registration. This is case number 1:14-CV-42.

Upon considering the filing, the Court interpreted it as a request, as a part of the request, was a preliminary junction with regard to the election scheduled for, I believe, May -- March 18th of 2004.

So we're here, not on the ultimate merits of the matter, but whether or not there's a basis for injunction with regard to that election.

All right, let's see who's -- Mr. Wright, you're present.

MR. WRIGHT: Yes, sir.

THE COURT: All right. And who's present for the Board of Elections?

MR. NESMITH: Your Honor, Bill NeSmith on behalf of Sumpter County Board of Elections and Voter Registration.

THE COURT: All right. Are there any preliminary comments to be made?

1 **MR. WRIGHT:** Yes, sir.

2 **THE COURT:** You may make them.

3 **MR. WRIGHT:** All right. Good morning, sir.

4 **THE COURT:** Good morning.

5 **MR. WRIGHT:** What is -- the issue is, one,
6 that the Sumpter County Board of Elections and the
7 supervisors did not have the authority to call the
8 election when they called it. Simply because the bill,
9 HB H 36, had not been passed through the General
10 Assembly. It had not even been signed at that point
11 when the election was called.

12 Furthermore, they have also violated the state
13 rule of 144 feet by being in the area while voting is
14 going on. There is early voting in the courthouse
15 right now while supposedly candidates were steady going
16 in qualifying for an election that's going to take
17 place in May. So that's a violations of the rules.
18 So, Sumter County --

19 **THE COURT:** A violation of what rule?

20 **MR. WRIGHT:** Of the rule of 144-foot rule for
21 a candidate --

22 **THE COURT:** I know the state law used to
23 be -- that's not a federal issue, is it?

24 **MR. WRIGHT:** Well, it's an issue that is
25 being violated to show that the election that is

1 scheduled to take place was just in violation because
2 it is being ran at the same time another election for
3 the same seats on -- when I say same seats, or the
4 Sumter County Election Board is having two elections
5 almost simultaneously.

6 **THE COURT:** I understand what you're saying,
7 Mr. Wright, but what I'm getting at is, if that's true,
8 isn't that a question for the Superior Court of Sumter
9 County? What does that have to do with federal law?

10 **MR. WRIGHT:** All right. Well, then it may
11 not -- then you may not have jurisdiction over that. I
12 stand corrected. So --

13 **THE COURT:** I'm not assuming that, but I'm
14 asking you the question because it would appear that if
15 those are mechanical issues with regard to the proper
16 way that the election is proceeding or not under state
17 law --

18 **MR. WRIGHT:** Uh-huh.

19 **THE COURT:** -- that would not necessarily be
20 a federal question. That's my point.

21 **MR. WRIGHT:** All right. And so before you
22 then, is that there is a law that was in 1974 that was
23 passed through federal courts in the Middle District,
24 and then it was so ordered in 1988 that is still
25 standing as we speak today where the injunction was put

1 in place to prevent such things from happening that is
2 happening now, where a majority board is being taken
3 out of their seats, not by the vote of the constituents
4 which they represent. And so, if the new plan that is
5 that is proposed to go in effect, that plan will
6 violate Section 2 of the Voting Rights Act of 1965.

7 And that's --

8 **THE COURT:** Any further comments?

9 **MR. WRIGHT:** That's it for now.

10 **THE COURT:** All right. Thank you. And for
11 the defendant, any preliminary comments?

12 **MR. NESMITH:** Yes, Your Honor. I really
13 guess I thought that you were going to ask about
14 something a little bit different. We did want to
15 invoke the rule if there are witnesses present.

16 **THE COURT:** All right. Let's see. Mr.
17 Wright, what witnesses do you have present, and then
18 I'll ask the same thing of the defendants?

19 **MR. WRIGHT:** Your Honor, they are present,
20 but I don't plan to call them.

21 **THE COURT:** Well, if they might be called --

22 **MR. WRIGHT:** Well, I have Alice Green --

23 **THE COURT:** If you all could stand when your
24 name is called, please?

25 **MR. WRIGHT:** -- Edith Ann Green, Carolyn

1 Whitehead, Donnie Smith, and Andrea Wright.

2 **THE COURT:** All right. And are there other
3 witnesses who will be called by the defense?

4 **MR. NESMITH:** Just Mr. Robert Brady, who is
5 the Board of Elections supervisor. Robert E. Brady.

6 **THE COURT:** All right. Well, those persons
7 who just stood, I'm going to ask you to wait in the
8 waiting room for witnesses until you are called. If we
9 determine you will not be called, then we'll let you
10 come back in the courtroom. All right. Thank you.
11 You may be seated.

12 **MR. NESMITH:** Thank you, Your Honor. If I
13 may, what I will do is I would like to address the
14 first two things that Mr. Wright said, and then I will
15 give you a short preliminary statement.

16 What Mr. Wright is saying is that the Board of
17 Elections did not have the authority to proceed because
18 House Bill 836 had not been signed, but the Sumter
19 County Board of Elections did not call this election
20 based on House Bill 836. Instead, they called the
21 election based on Senate Bill 4EX, which this Court
22 declared in its order was the law of the state of
23 Georgia.

24 Now, the flaw with the past one is because of the
25 phase-in, the 4EX Bill, the phase-in was not feasible,

1 and that's what 836 sought to correct, which it would
2 correct in the -- really in the May election. So the
3 authority, the law that the Board of Elections used to
4 call this was not House Bill 836, but was Senate Bill
5 4EX.

6 Now, not only that, we also, we being the Board of
7 Elections, have two letters from the school board's
8 lawyer who said that it was the duty of the Board of
9 Elections to call the election. It was not the duty of
10 the Board of Education to ask for the call, but there
11 was an election that needed to be had, and I've got
12 those letters, that it was the Board of Education's --
13 I mean, excuse me, Board of Elections' duty to do that,
14 and the Board of Elections took that advice and moved
15 forward with it.

16 Now, as to the 144 feet, the state law, it is
17 state law, Judge, it's not federal law, and I don't
18 know that there's been any allegation that would take
19 it to -- make it a federal question. At this point,
20 it's a -- as you said, a mechanical issue with the
21 Secretary of State's office or a superior court judge.

22 And there certainly are investigators for the
23 Secretary of State's office, and they do come down, and
24 they come quickly. And if that allegation was made to
25 them, they will come down, and if there is an

1 violation, they'll correct it. And I just don't see at
2 this point it has arisen to a federal level.

3 **THE COURT:** Now, this -- that 144 feet has to
4 do with a -- how far candidates or how close
5 campaigning activities can take place to the actual
6 election site, is that -- am I correct that that's what
7 it references to?

8 **MR. NESMITH:** That's correct. I don't recall
9 it being 144 feet, but --

10 **THE COURT:** I mean, what I'm --

11 **MR. NESMITH:** Yeah, that's right.

12 **THE COURT:** I know there's some rule
13 about how --

14 **MR. NESMITH:** That's correct.

15 **THE COURT:** -- they have to be.

16 **MR. NESMITH:** Yes, sir. That's exactly
17 correct, Judge. You can't campaign within a certain
18 distance of the polling place, and a candidate cannot
19 be within -- they can come and they can vote,
20 obviously, but once they vote, they got to leave and
21 they can't hang around. And so I think what
22 possibly -- well, whatever this allegation is, it is a
23 purely a matter of state law and it has no federal
24 standing at all at this point as far as I can tell
25 based on what Mr. Wright is saying. He's just talking

1 about it being crossing an imaginary line or a stated
2 line by state law.

3 **THE COURT:** He also made some reference about
4 qualifying for two elections -- I guess I should ask
5 Mr. Wright to clarify what he meant, but I just
6 recalled that there was a question in my mind. This is
7 the election set for the 18th, next Tuesday, is it a
8 primary, or is it an election to a position?

9 **MR. NESMITH:** It's an election to a position
10 because these are nonpartisan, and so there doesn't
11 have to be a primary, and so what this is is this
12 election will fill the four vacant seats on the nine
13 district board. There are four -- when the lawsuit was
14 filed, as the Court I'm sure remembers, and that --
15 everything was stayed, there were four members whose
16 terms expired on December 31st of 2012, and so once the
17 Court lifted its injunction, and then we started trying
18 to ask questions of the school board through their
19 attorney how they wish to proceed, the attorney said it
20 was up to Board of Elections to make that call, and
21 that was when the decision was made to go forward with
22 it. And it's based under -- what we have to do, as we
23 understand from the legislative counsel and from the
24 Secretary of State, is we must phase in people, and so
25 that's what this is an attempt to do is to allow those

1 four members who have been serving on a Board of
2 Education since December of 2012, without being elected
3 by the people, to stay in that election and then to be
4 immediately or almost immediately installed as board
5 members, and then they'll finish out those terms, and
6 then we'll have to run again under House Bill 836,
7 which has a May election, which, again, is a federal
8 requirement that that election be in May.

9 Now, these are not state requirements; they're
10 federal requirements. That's why these are so close,
11 back to back. These are, as the Court I'm sure is
12 aware, when there used to be July elections, those now
13 have been pushed back because of the soldiers and
14 sailors --

15 **THE COURT:** The time needed for a run off.

16 **MR. NESMITH:** Yes, sir, that's correct.

17 **THE COURT:** Okay. So the same four persons
18 will be running again in the May, so they're running
19 two elections; is that correct?

20 **MR. NESMITH:** Some are not running again.
21 Some have chosen not to run again, and some, of course,
22 are opposed and some are not.

23 **THE COURT:** But, in effect, though, there are
24 two elections.

25 **MR. NESMITH:** Yes, that's correct. And if,

1 whoever is elected in the March election can certainly
2 run in the May election, which that seat won't take --
3 that will not take effect until January 1st of 2015.

4 **THE COURT:** Okay. So now, so the four
5 positions that are up for election next week are the
6 four seats on a nine-member board.

7 **MR. NESMITH:** That's correct.

8 **THE COURT:** The election in May is for a what
9 number of board?

10 **MR. NESMITH:** That's for five plus two, which
11 is the plan that this Court said was the law of state
12 of Georgia.

13 **THE COURT:** That's under the Bill 4EX.

14 **MR. NESMITH:** That's -- well, it would have,
15 Your Honor, but what we did, or what, I say we, the
16 General Assembly did, what we're here about, is House
17 Bill 846, took that bill that you said was the law of
18 the state and had to correct the phase-in part, because
19 part of the law was -- could not be done because the
20 dates had already passed.

21 **THE COURT:** Okay.

22 **MR. NESMITH:** And so what they did is they
23 cleaned that part of it up to make it -- it's the same
24 exact bill, just the phase-in has been updated.

25 **THE COURT:** Okay. If you will remind me --

1 and, of course, if Mr. Wright has a different
2 understanding, he'll have an opportunity to say so --
3 the previous case that was in the court --

4 **MR. NESMITH:** Yes, sir.

5 **THE COURT:** -- was one asserting that there
6 was a violation of the one-person-one-vote rule because
7 the nine seats were out of balance.

8 **MR. NESMITH:** That's correct.

9 **THE COURT:** All right. And the Court heard
10 some evidence on that, and I think ultimately
11 determined that they were, in fact, out of balance.

12 **MR. NESMITH:** That's correct.

13 **THE COURT:** And the parties had different
14 opinions as to how that should be corrected.
15 Ultimately, the Court decided that it would redraft
16 those nine --

17 **MR. NESMITH:** Correct.

18 **THE COURT:** -- so they would be in balance.

19 **MR. NESMITH:** Yes, sir.

20 **THE COURT:** One of the issues, as I recall
21 it, was that the previous senate bill had been
22 submitted to the legislation, had been passed by the
23 legislation, I believe, a senate bill --

24 **MR. NESMITH:** Right.

25 **THE COURT:** -- and signed by the governor.

1 **MR. NESMITH:** That's correct.

2 **THE COURT:** At that time, though, section
3 five of the voter's right act was in place --

4 **MR. NESMITH:** Right.

5 **THE COURT:** -- and there was a question of
6 whether or not it had been properly pre-cleared by the
7 Department of Justice.

8 **MR. NESMITH:** That's right.

9 **THE COURT:** And it had been submitted and
10 then withdrawn, as I understood it.

11 **MR. NESMITH:** That's correct.

12 **THE COURT:** So the Court determined, then,
13 that there was no pre-cleared bill under the new bill
14 that had been passed by the senate and adopted by the
15 governor, so therefore we were under the old nine --

16 **MR. NESMITH:** The --

17 **THE COURT:** -- so therefore the Court needed
18 to do the redraft.

19 **MR. NESMITH:** That's right.

20 **THE COURT:** In the meantime, the Supreme
21 Court tripped section five.

22 **MR. NESMITH:** That's right.

23 **THE COURT:** Meaning there was no longer a
24 necessity to preclear the senate bill.

25 **MR. NESMITH:** That's correct.

1 **THE COURT:** Which is why the Court
2 determined, after asking for some responses from the
3 parties, that that put us back at a place where the
4 effective law would be that that was passed and adopted
5 by the legislation and signed by the governor --

6 **MR. NESMITH:** Yes, sir.

7 **THE COURT:** Which would be the five --

8 **MR. NESMITH:** With a phase in of the nine.

9 **THE COURT:** -- the five, right. And what had
10 happened was those under -- had already passed, is what
11 you're saying?

12 **MR. NESMITH:** Yes.

13 **THE COURT:** All right. Okay. All right. I
14 want to make sure I was --

15 **MR. NESMITH:** You got it, Judge, a lot better
16 than I think I remember it, but --

17 **THE COURT:** It's been very complicated, as I
18 remember it.

19 **MR. NESMITH:** Yeah, it is.

20 **THE COURT:** But, in effect, with the new five
21 member board taking place, that mooted the issue about
22 the disproportionality of the nine.

23 **MR. NESMITH:** That --

24 **THE COURT:** In effect.

25 **MR. NESMITH:** Yes, I would agree.

1 **THE COURT:** That's what -- all right.

2 **MR. NESMITH:** So, I mean, and, of course,
3 what it -- it's a five plus two at-large.

4 **THE COURT:** Right, right, right.

5 **MR. NESMITH:** And what we were -- and, of
6 course, what the bill that the Court said was the law
7 of the state of Georgia, retroactive 2011, did have a
8 phase-in provision, but, unfortunately, because of the
9 way that the dates were constructed, that's why we
10 thought that it would be a better way for it to be
11 clean, and the General Assembly stepped in and said, we
12 can fix that, which they did, and so what we did is
13 proceed under the old law to have the authority to call
14 it and go ahead and fill those four seats, and then we
15 could move forward with whatever House Bill 836 says.

16 **THE COURT:** All right. So I guess I need to
17 address Mr. Wright and get a clarification then.

18 So, are you saying that both the election of the
19 four to complete the nine member service and the
20 subsequent May election, you're saying that both of
21 those are in violation of Section 2?

22 **MR. WRIGHT:** Of Section 2.

23 **THE COURT:** Well, how -- how would the nine
24 be in violation since that's essentially --

25 **MR. WRIGHT:** Because of what happened, and as

1 Mr. NeSmith said, that the Secretary of State would
2 come and investigate, but I stand to differ with him.
3 I have six complaints here that was made from February
4 to this date, and they have never responded. I have
5 the --

6 **THE COURT:** But --

7 **MR. WRIGHT:** But, but -- but what I'm saying
8 is --

9 **THE COURT:** Don't get ahead of me now. Don't
10 get ahead of me now.

11 **MR. WRIGHT:** I'm not --

12 **THE COURT:** I'm trying --

13 **MR. WRIGHT:** Well, let me ask you a
14 question --

15 **THE COURT:** I'm trying to figure out what
16 your claim is.

17 **MR. WRIGHT:** All right.

18 **THE COURT:** I thought that, from reading your
19 complaint, that the election on Tuesday had to do with
20 the five member --

21 **MR. WRIGHT:** No, it has to do with the nine,
22 and what makes it --

23 **THE COURT:** Then, how is that a violation --

24 **MR. WRIGHT:** And what makes it important
25 is --

1 **THE COURT:** Just a minute, just a minute.

2 **MR. WRIGHT:** Okay.

3 **THE COURT:** You were basically saying, keep
4 the nine districts as they are, so how would that be a
5 violation if that's only going to be a vote as to the
6 nine?

7 **MR. WRIGHT:** Because the incumbent seat in
8 district one, which is Ms. Carolyn Whitehead, who had
9 been a member of the board for 20 years, her
10 employer -- and she's an incumbent. Her seat is being
11 ran unopposed in that particular district right now by
12 a white male, and Ms. Whitehead's position is that she
13 did not rerun --

14 **MR. NESMITH:** Your Honor, I'm going to -- I'd
15 like to object to that. I don't -- he can't -- I don't
16 think that Mr. Wright, as a non-attorney, can put
17 forward someone else's position in this way.

18 **THE COURT:** Well, I was going to ask about
19 that. I saw that in his complaints. I'll let him
20 comment on it, and I'll ask the question --

21 **MR. WRIGHT:** And that is the only reason I
22 included that particular one is --

23 **THE COURT:** What's the reason?

24 **MR. WRIGHT:** That I included the March 18th,
25 because it is under the nine, but because that seat is

1 in a predominant black population in Sumter County
2 and --

3 **THE COURT:** But that doesn't mean a white
4 person couldn't run for the seat, though.

5 **MR. WRIGHT:** No, but it doesn't -- but the --
6 but a white person has never won that seat in Sumter
7 County.

8 **THE COURT:** Yeah, but --

9 **MR. WRIGHT:** But -- but what I'm saying is
10 that when she was prevented from qualifying --

11 **THE COURT:** How was she prevented from
12 qualifying, by whom?

13 **MR. WRIGHT:** By her employer.

14 **THE COURT:** Well, that's -- that would be her
15 complaint, if it is a complaint.

16 **MR. WRIGHT:** But she brought it to me, who's
17 is president of GAP and now president of the Sumter
18 County local NAACP. That's one of the complaints that
19 we have made with the DJJ.

20 **THE COURT:** Yeah, but that would be a
21 personal violation punitively, I guess, of her right.

22 **MR. WRIGHT:** Right, but that's why -- then,
23 it violated her right, true, and --

24 **THE COURT:** Well, but she --

25 **MR. WRIGHT:** But it also violated --

1 **THE COURT:** She's not asserting that, though.
2 She's not asserting that.

3 **MR. WRIGHT:** But it -- but -- say that again.

4 **THE COURT:** She's not asserting such a thing.

5 **MR. WRIGHT:** She's not?

6 **THE COURT:** No, she's not.

7 **MR. WRIGHT:** Well, she brought --

8 **THE COURT:** She's not a party to a lawsuit in
9 this court saying that her right to run --

10 **MR. WRIGHT:** Well, I mean, but what we are
11 saying in this is that we want that election stopped so
12 that -- and clarified, so that she can run for that
13 seat.

14 **THE COURT:** But what is -- what law is
15 preventing her from running?

16 **MR. WRIGHT:** Well, there is not a particular
17 law that's been prevented her running.

18 **THE COURT:** No, what I'm getting at -- and
19 I'm not making -- I'm not discounting the point you're
20 trying to make, but I'm trying to get back to what the
21 legal argument is. If -- is there any legal mechanism
22 on the part of Board of Elections of some official of
23 Sumter County that's preventing her from qualifying to
24 run for that office?

25 **MR. WRIGHT:** Well, I would say the official

1 would have to be her boss in DJJ.

2 **THE COURT:** But is her boss a government
3 official, someone who has a -- you know, how can I
4 enjoin her -- I mean, how is her boss --

5 **MR. WRIGHT:** Well, he's a state employee, so,
6 you know, exactly how that would fall into the legal
7 realms of it, I mean, I really don't know the answer to
8 that, but, I mean, but --

9 **THE COURT:** Okay. Well, I'm going to tell
10 you -- I'll tell you, generally speaking -- and I'm not
11 giving you legal advice. Generally speaking, if a
12 person's right is violated under the law --

13 **MR. WRIGHT:** Uh-huh.

14 **THE COURT:** -- then they can assert that
15 right.

16 **MR. WRIGHT:** Uh-huh.

17 **THE COURT:** Generally speaking, somebody else
18 can't assert a right that's personal on their behalf.

19 **MR. WRIGHT:** And -- and -- and the steps have
20 been taken on that side of it to assert those rights
21 through, what you say, the EEOC and those areas, so
22 those things are already being done at the same time
23 the complaint has been made with the State Department
24 of Juvenile Justice Service. I do know that they came
25 to do an investigation. I don't know the outcome of it

1 yet. But it certainly would change the makeup of the
2 Sumter County School Board district as it relates to
3 the seating of the nine members.

4 **THE COURT:** All right. I get your point --

5 **MR. WRIGHT:** Because, you know, there are
6 people who have voted for her for 20 years, was the
7 pride of her, because she basically needs her job, and
8 that's what she said, that she needs her job, so she
9 wasn't going to go against her and stand to be fired.

10 **THE COURT:** Well, I don't know the details --

11 **MR. WRIGHT:** I'm just saying, you know, I
12 mean, but that's what the complaint says, though.

13 **THE COURT:** But that's not a complaint of
14 hers in this court.

15 **MR. WRIGHT:** Right. But what --

16 **THE COURT:** That's --

17 **MR. WRIGHT:** But what we're saying to you is
18 that it violates Section 2 in that election because
19 it's going to change where the constituents in that
20 area will not have an opportunity to vote for the
21 candidate of their choice.

22 **THE COURT:** I understand what you are saying
23 as a conclusion, but the Board of Elections, based on
24 what you are saying to me, has not prevented that
25 person or anybody else from qualifying to run in the

1 election.

2 **MR. WRIGHT:** I'll agree with that.

3 **THE COURT:** So there is no state actor, as I
4 understand it, that's done something that's a violation
5 of a right under Section 2, as I understand it, that's
6 my point. I think you are arguing to me an effect, an
7 effect of her not running is that people who normally
8 would have voted for her would not have her to vote for
9 if --

10 **MR. WRIGHT:** Correct.

11 **THE COURT:** -- if things are as you say they
12 are.

13 **MR. WRIGHT:** Yes, sir.

14 **THE COURT:** But she has not challenged the
15 election by saying that she was deprived, improperly,
16 of the opportunity to serve, again, by, I guess,
17 re-announcing or qualifying.

18 **MR. WRIGHT:** But she has. She challenged it
19 through the Secretary of State office.

20 **THE COURT:** Well, then that's a matter for
21 the Secretary of State.

22 **MR. WRIGHT:** Okay. All right, but -- but I'm
23 saying, but it has been challenged.

24 **THE COURT:** Yeah. I understand, I
25 understand. I'm not saying she has not challenged it.

1 What I'm getting to is, in other words, there has to
2 be -- the fancy term for it is, it has to be a
3 justiciable issue. There has to be a valid legal issue
4 in the court for this court to address, and what I'm
5 suggesting to you is I don't understand --

6 **MR. WRIGHT:** I understand what you're saying.

7 **THE COURT:** -- how her situation, even taken
8 for true --

9 **MR. WRIGHT:** Okay.

10 **THE COURT:** -- makes it a justiciable issue
11 in this court on the complaint that you made. That's
12 my point, and I wanted to clarify those matters. All
13 right. Thank you, Mr. Wright.

14 Do you have anything else you wanted to say?

15 **MR. NESMITH:** Well, the only thing I was
16 going to say is -- and I think the Court did it better
17 than I could. But I was going to say that the relief
18 sought in the March election, if the Court granted it,
19 is contrary to what he's asking for, which is what the
20 Court -- which is the nine person. And the problem
21 with that is that Mr. Wright has no standing to
22 challenge the drawing of the districts.

23 First off, this is relief that the Board of
24 Elections cannot give. The Board of Elections cannot
25 redraw lines. You know, and ultimately he is asking to

1 stop the election, but he's also wanting the -- you to,
2 first off, to take the Board of Elections, return them
3 to nine, which is contrary to your order. So, he was
4 a -- he was an intervenor in the last case, and that
5 was all litigated, and he's coming in here and
6 attempting to relitigate that again, the order of this
7 Court, and then on top of --

8 **THE COURT:** Did the Court decide anything on
9 Section 2 under the --

10 **MR. WRIGHT:** No, sir, you did not. You did
11 not on that, but you did decide that the five plus two
12 was the proper plan. Now, whether it violates Section
13 2, that's a different thing.

14 **THE COURT:** That's a different question.

15 **MR. WRIGHT:** But what I'm saying is what he's
16 asking this Court to do I don't know if can be done,
17 the Board of Elections cannot redraw lines, and he's
18 also asking that the Sumter County Board of
19 Commissioners lines be redrawn to nine, which has been
20 in place for quite some time, at least since the 2010
21 census and -- I mean, the 2000 census and in the 2010
22 and it's been approved by the U.S. Department of
23 Justice before, you know, Section 5 was removed and had
24 got the full approval of the U.S. Department of
25 Justice.

1 And so, you know, I could -- I can go through all
2 through the *Gingles* tests and everything else, but what
3 I'm saying is I don't believe he has standing to move
4 here at this time for what he's asking, at least on the
5 March 18th.

6 **THE COURT:** All right. I just wanted to get
7 some clarification of what each person's position --
8 each side's position is at this time.

9 **MR. NESMITH:** Okay. All right.

10 **THE COURT:** So unless you have some other
11 comments, I'm going to give Mr. Wright the opportunity
12 to --

13 **MR. NESMITH:** That will be fine.

14 **THE COURT:** -- present any evidence he might
15 wish to present.

16 **MR. NESMITH:** Okay.

17 **THE COURT:** All right. On the issue of
18 preliminary junction.

19 **MR. NESMITH:** I'm sorry --

20 **THE COURT:** On the issue of whether a
21 preliminary injunction should be granted regarding the
22 March 18th of 2014's election.

23 **MR. NESMITH:** All right. Thank you.

24 **THE COURT:** All right. Mr. Wright, you may
25 present any evidence you wish to present on the issue

1 of the preliminary injunction.

2 MR. WRIGHT: Your Honor --

3 THE COURT: I think it's --

4 MR. WRIGHT: That's fine.

5 THE COURT: I don't -- just call what you can
6 without -- all right. Just remember that I think I saw
7 some of your submissions in the record; is that right?

8 MR. WRIGHT: Yes, sir.

9 THE COURT: All right.

10 MR. WRIGHT: Your Honor, Sumter County has
11 never had in a countywide election a black African
12 American to win in a race. If the current --

13 THE COURT: Let me slow you down for a minute
14 now.

15 MR. WRIGHT: Okay.

16 THE COURT: This is the evidence phase.

17 MR. WRIGHT: Yes, sir.

18 THE COURT: Not the argument phase.

19 MR. WRIGHT: Right.

20 THE COURT: So if you have a statement you
21 wish to present as evidence, I'll let you be sworn in
22 and make that statement and whatever admissible
23 documents you want to present, you can do.

24 MR. WRIGHT: Right.

25 THE COURT: Because I have to give

1 Mr. NeSmith the opportunity to cross examine.

2 MR. WRIGHT: Okay.

3 THE COURT: And if this is an argument, that
4 can't be done.

5 MR. WRIGHT: Well, then I think you probably
6 need to swear me in.

7 THE COURT: All right. Then, if you would
8 come up, then, if you would get your documents and come
9 up to the chair here and be sworn, and then you may --
10 I think, Mr. NeSmith, the proper thing to do is just
11 for him just to state what information he believes he
12 has --

13 MR. NESMITH: Yes, Your Honor, I agree.

14 THE COURT: -- and without -- in other words,
15 you're not going to ask yourself questions.

16 MR. WRIGHT: All right.

17 COURTROOM DEPUTY: Do you solemnly swear or
18 affirm that the testimony you are about to give in the
19 case now before the Court will be the truth, the whole
20 truth, and nothing but the truth?

21 MR. WRIGHT: Yes, ma'am.

22 THE COURT: All right. You can get your
23 documents and come back up.

24 MR. NESMITH: May I ask as a preliminary
25 matter, Your Honor, all of -- we are going to confine

1 all evidence and testimony only to the nine board --

2 **THE COURT:** It's on the nine board because
3 that's the election that's at issue.

4 **MR. NESMITH:** Well, because what I believe
5 what Reverend Wright was starting off with had to do
6 with at-large elections, which would have nothing to do
7 with the nine.

8 **THE COURT:** All right. We'll see, as we get
9 through it. All right. Now, Reverend Wright, before
10 you begin, because I'm going to allow you just to give
11 your information as a statement, without -- because you
12 are not being questioned by anybody, but I'll
13 probably -- I might interrupt you on occasions -- that
14 this is not the time to argue the effect of the
15 evidence, but for you to state what evidence you
16 believe supports your position for a preliminary
17 injunction.

18 **MR. WRIGHT:** Right.

19 **THE COURT:** All right.

20 **MR. WRIGHT:** Okay.

21 **THE COURT:** You may proceed.

22 **MATHIS KEARSE WRIGHT, JR.**

23 **Having first been duly sworn, testified as follows:**

24 **MR. WRIGHT:** Well, Your Honor, I believe that
25 the evidence is the election was called and that the

1 senate bill, the SC EX, was not a bill that was voted
2 on by the local election board, nor has Bill HB 836
3 been voted on by the election board, and they would
4 need to have voted on that --

5 **THE COURT:** When you say the election board,
6 are you referring to the Board of Elections?

7 **MR. WRIGHT:** I mean -- I mean, I'm sorry, the
8 Board of Education. I'm referring to the Board of
9 Education. Okay. That they had not voted on either
10 those bills and adopted those bills as something that
11 they would do. Certainly under the current nine
12 district seating, the maps show that if this proposed
13 change take place, that there would only be two African
14 Americans left seated on the Sumter County School
15 Board; that, the map shows that with the configuration
16 of the new five district plan, all the seats -- all the
17 black African Americans would be immediately
18 eliminated, except for Ms. Alice Green and Edith Ann
19 Green.

20 So, that, to us, is a violation of Section 2,
21 which where they have -- in respect, they -- that's a
22 dilution of the vote, it's a splitting of the vote, and
23 especially when -- in district one, for when it's a --
24 has 65 percent black African Americans, and in district
25 five has 72 percent African American. So, then the

1 other three districts is 34, 38, and 47, and then also
2 you have to take into account that a large percentage
3 of those are not voting age.

4 So, immediately, if you go to the five district
5 plan, just looking at the numbers themselves, the
6 numbers themselves says that there's no way that the --
7 that the minority population would ever be able to seat
8 more than two candidates on the new configuration --
9 configured school board. Wherein, now, with nine
10 districts it is usually 4/4 with one swaying district,
11 and usually it basically goes between who gets out the
12 votes the best. And certainly in any fair justice or
13 democracy, and certainly the two bills that has gone
14 through are subject to even when in the -- in the
15 complaint they are designed to dilute the black
16 population in their voting strengths.

17 So, it's -- we are here, and I'm here to the Court
18 asking for the injunction that justice do prevail, and,
19 again, from the legal perspective, the -- Sumter County
20 has also been challenged in the *Edge versus Sumter*
21 *County District* about the two at-large seats, and that
22 was an issue that was brought up and that the Court
23 ruled that Mr. Edge was correct, and --

24 **THE COURT:** Which court ruled that, and when
25 are we talking about?

1 **MR. WRIGHT:** This is Edge versus Sumter
2 County District, and it was civil action CIV 80-20,
3 Americus, Middle District of Georgia, and it was in
4 1982.

5 **THE COURT:** Okay.

6 **MR. NESMITH:** Your Honor --

7 **THE COURT:** So I would assume then that any
8 subsequent makeup of the board either complied with
9 that ruling or whatever the law was at the time the
10 latest configuration was established.

11 **MR. WRIGHT:** Right, the nine districts.

12 **THE COURT:** But, no, I -- you were talking
13 about the five. I think you said something about five
14 in the case under *Edge*.

15 **MR. WRIGHT:** Yes, sir, that is.

16 **THE COURT:** They --

17 **MR. WRIGHT:** Right. That if they went to the
18 five, which is the proposed plan --

19 **THE COURT:** Yeah, but I was trying to
20 understand what the meaning of the *Edge* case had to do
21 with what the situation --

22 **MR. WRIGHT:** What's going on now. Is that it
23 was challenging -- and because in this new plan it has
24 five single districts and then it has two at-large
25 seats, and in the *Edge* case it was challenging at-large

1 seats in Sumter County.

2 **THE COURT:** Okay. But -- and what happened?

3 **MR. WRIGHT:** Sir?

4 **THE COURT:** What happened?

5 **MR. WRIGHT:** Is that the court sided with
6 Mr. Edge, ruling in Mr. Edge's favor, that the -- that
7 the at-large seats were not acceptable in Sumter
8 County.

9 **THE COURT:** Yes, but that -- the previous
10 matter was an all at-large vote, was it not?

11 **MR. WRIGHT:** From my understanding of reading
12 it, and, again, I'm not a legal mind, I didn't -- I
13 didn't -- I didn't interpret it that way.

14 **THE COURT:** I don't know. I'm just asking.
15 Mr. NeSmith, just to save some time, do you know?

16 **MR. NESMITH:** Well, yes, Your Honor, I --
17 it's actually an Eleventh Circuit decision. It started
18 in the Middle District, and it was -- what it was, it
19 was challenging a one at-large seat, and everything
20 wasn't at-large, it was -- instead of single member
21 districts, and when the -- the Middle District went
22 ahead and approved a particular plan, and the only
23 thing that the Eleventh Circuit said was, you can't do
24 that without considering Section 2. And so they
25 remanded it. They didn't really side with anybody, the

1 Eleventh Circuit anyway, they just said that it's
2 improper for the Middle District to look at five, look
3 at four, but ignore two, and that was -- and I have
4 that case if you would like.

5 **THE COURT:** We can find it, but --

6 **MR. NESMITH:** All right.

7 **THE COURT:** But the point is, at some time
8 subsequent there was some district seats and some at-
9 large seats; is that right?

10 **MR. NESMITH:** I think they were all at-large.

11 **THE COURT:** They were all at-large.

12 **MR. NESMITH:** They were all at-large.

13 **THE COURT:** But after that --

14 **MR. NESMITH:** They became single member
15 districts.

16 **THE COURT:** Single member district. All
17 right.

18 **MR. NESMITH:** That's right.

19 **THE COURT:** And there are no at-large seats
20 on the commissioners now?

21 **MR. NESMITH:** Not at the county commission
22 level, no.

23 **THE COURT:** All right. That was my question.

24 **MR. NESMITH:** And that wasn't the -- the
25 reason -- just for clarification for the Court, the

1 reason there're at-large seats with the Board of
2 Education is because that's what the Georgia law says.
3 Georgia law says you can mimic your county commission
4 and have up to two at-large seats. That's why
5 that's --

6 **THE COURT:** All right. I just wanted to get
7 a historical context of the issue.

8 **MR. NESMITH:** Yes, sir.

9 **THE COURT:** All right. Do you have any
10 different --

11 **MR. WRIGHT:** Well, yes, and he said what I
12 was about to say, as long as it been -- interfere and
13 violates Section 2, and that's what we are claiming is
14 that it violates Section 2.

15 **THE COURT:** All right. All right.

16 **MR. WRIGHT:** I'm ready for cross if he has
17 some questions.

18 **THE COURT:** All right. I had one question I
19 want to ask you ahead of time so -- even if you've got
20 something to say to follow up what my question is.

21 The election set for the 18th, though, is still
22 based on a nine-district matter, so how is that a
23 violation of Section 2, because you are essentially
24 saying the nine is what it should be?

25 **MR. WRIGHT:** Well, because of what you have

1 outlined for me earlier, then that nine-seat
2 configuration is something that -- and that particular
3 seat or, say, argument or complaint, is something that
4 is not before you. So what's before you is, basically,
5 is that then I would not object to the nine to that
6 particular race, but that then the -- then the
7 objection would be for the May 20th race, that that
8 May 20th race is in violation of Section 2.

9 **THE COURT:** All right. Okay. Have you got
10 cross examination, Mr. NeSmith?

11 **MR. NESMITH:** Well, Your Honor, did I
12 understand that he withdrew his objection and --

13 **THE COURT:** I think he is basically saying
14 that that -- I don't want to say he's agreeing with the
15 Court because the Court is not an advocate for either
16 side.

17 **MR. NESMITH:** Yes, sir.

18 **THE COURT:** But I was just pointing out
19 earlier, the issue of the person who is not qualified,
20 has not qualified, sought to qualify. It's not an
21 issue properly before this Court --

22 **MR. NESMITH:** Correct.

23 **THE COURT:** -- to be addressed by way of Mr.
24 Wright's complaint, and otherwise, I don't think
25 there's any other bases suggesting that the election

1 for Tuesday, which has to do with the nine member
2 district, would be one he would be challenging. Am I
3 misstating what your --

4 **MR. WRIGHT:** No, sir. You said it correctly.
5 In other words, May -- I mean, March 18th election is
6 under the nine district configuration. So certainly
7 then, because that's what we want, then that is not
8 what we want you to, let's say, rule on at this point
9 because you, like I said earlier, you explained that
10 that's not before you. So what we would want you to
11 rule on is in -- that's in your order that you made,
12 that what was before you was about the one-man-one-vote
13 principle, and certainly in this particular proceeding
14 what I am bringing before you is that the May 20th
15 election violates Section 2 of the Voting Rights Act.

16 **THE COURT:** Was there a prayer for injunctive
17 relief in your petition?

18 **MR. WRIGHT:** Yes, sir, for the May 20th. I
19 think it's the last entry on the relief page.

20 **THE COURT:** I read it all. I just did not
21 remember specifically.

22 **MR. NESMITH:** It asks for both.

23 **THE COURT:** All right. That's fine. You may
24 proceed. So I guess what we are really talking about
25 is May.

1 **MR. NESMITH:** Okay. All right, sir.

2 **THE COURT:** Which is not quite as tight at
3 the 18th of March.

4 **MR. NESMITH:** That's good. That's right,
5 Your Honor. All right, so just a couple of questions.
6 I think the Court pretty much said most of it.

7 **CROSS EXAMINATION**

8 **BY MR. NESMITH:**

9 **Q.** I'm just asking you about -- I'm so sorry, I'm
10 used to staying in the -- let me get back here so it's
11 well recorded. I'm used --

12 **THE COURT:** I have a general two-foot rule, I
13 give everybody a little, as long as you speak loud
14 enough.

15 **MR. NESMITH:** This suits me just fine.

16 **THE COURT:** I could never quite stand in one
17 place myself.

18 **MR. NESMITH:** Yeah. I'm used to pacing so.

19 **BY MR. NESMITH:**

20 **Q.** All right. Well, Mr. -- Reverent Wright, one of
21 the complaints, and I'm just talking about the five
22 plus two, the May 20th election, you said that the --
23 that this was not voted on by the Board of Education;
24 is that correct?

25 **A.** Yes, that's what I said.

1 Q. Okay. And, in other words, the Board of Elections
2 -- I'm sorry, education. That's going to be hard for
3 me to keep those apart. The Board of Education --

4 A. Me too.

5 Q. The Board of Education should have voted on
6 whether or not to go to a five plus two, and they were
7 not given that opportunity, is that what you're saying?

8 A. Yes. I haven't seen any of the -- I looked at
9 minutes, and I went through them, and I didn't find
10 anywhere in the minutes that they had been voted on.

11 MR. NESMITH: If I may approach?

12 THE COURT: You may.

13 BY MR. NESMITH:

14 Q. Mr. Wright, what I have is a letter from Gatewood,
15 Skipper, and Rambo, dated January 19th of 2012. I
16 think, as you know, Mr. Jimmy Skipper was the school
17 board attorney at that time.

18 A. Uh-huh.

19 Q. Okay. This is a letter that he wrote to the
20 United States Department of Justice on January 19th of
21 2012, concerning preclearance of the new five plus two
22 school board.

23 A. Uh-huh.

24 Q. And in here, he indicates that on November 11,
25 2010, a motion was made by Mr. Goodnan, seconded by

1 Ms. Fitzpatrick to pursue a resolution to reduce the
2 board to seven members, motion carried unanimously.
3 And then, on 12/9/2010, a motion was made by
4 Mr. Goodnan, seconded by Ms. Brinson to approve the
5 resolution to introduce local legislation providing for
6 a reduction in the number of board members, the motion
7 carry unanimously.

8 A. And that was in -- what month and year that that
9 vote took place?

10 Q. January 19th, 2012.

11 A. That's the date of the letter, but the date when
12 the actual event took place.

13 Q. November 11th, 2010, and December 9th, 2010.

14 A. Thank you. Also, you failed to mention that after
15 the seating of the new board -- that is correct -- and
16 when the board changed and the black African American
17 came on that replaced Ms. Minic in the swaying
18 district, there was another vote taken, and in that
19 vote -- and no board is governed by the previous board,
20 and that board voted to not do the 7/2. That board
21 voted for nine.

22 Q. Do you have that document with you?

23 A. I may have it, or it may be still at the office,
24 but if the Court needed, I do have that document.

25 Q. So you do agree, though, that there was a vote to

1 go to a five plus two?

2 **A.** Yes, there was one, and there was also one to keep
3 nine.

4 **Q.** Yeah. After -- after --

5 **THE COURT:** I'm sorry, I just need a
6 clarification. So when was the vote for the -- when
7 was second vote for the nine?

8 **MR. NESMITH:** I don't have -- I don't know
9 anything about it. All I know, Your Honor, is that
10 after they withdrew their submission from the
11 Department of Justice at some point, either right
12 before or right after, there was a vote to proceed as a
13 nine person board instead of a five plus two, which had
14 already been passed by the General Assembly.

15 **THE COURT:** That's what I'm trying to find
16 out. Was the vote not to support a reduced board made
17 prior to it being addressed by the legislation?

18 **MR. NESMITH:** No, sir.

19 **THE COURT:** Do you know anything different
20 than that, Mr. Wright?

21 **MR. WRIGHT:** Well, the only thing different
22 that I know, and that the board members could testify
23 to, is that Mr. Skipper, who was representing them at
24 that time, failed to disclose to them that there was
25 a -- there was a grandfather clause that was in there

1 that said that you didn't have to do it if you had nine
2 as of June 1st, 2010, and that if they had -- and the
3 testimony was that if they had've known that, because
4 he presented it to them as that they didn't have a
5 choice.

6 **THE COURT:** Yeah, I understand that, but I'm
7 just asking whether there was a vote to withdraw the
8 resolution going to a five plus two prior to the
9 legislature actually acting on it and adopting that,
10 such a resolution.

11 **MR. WRIGHT:** No, sir.

12 **THE COURT:** That's what I needed. You may
13 continue, Mr. NeSmith.

14 **MR. NESMITH:** Okay. And there is one other
15 thing here, if I just may approach again.

16 **THE COURT:** You may.

17 **BY MR. NESMITH:**

18 **Q.** Again, with Mr. Skipper's letter, if you could
19 look down here under section B?

20 **A.** For some reason I'm having a problem seeing it.
21 Could you read it?

22 **Q.** Sure, I'll be glad to. Section B, which is
23 talking about the Official Code of Georgia Annotated
24 20-2-52, and this is a letter that was, of course, was
25 a carbon copy to -- the superintendent of the Sumter

1 County Board of Education at that time was Dr. Roy
2 Brooks. And what it says: It should also be pointed
3 out that during the time frame in 2010 that the Board
4 of Education was discussing and considering the
5 reduction in size, the Georgia General Assembly adopted
6 and the governor signed into law an amendment to
7 O.C.G.A. 20-2-52, which provides that: It is the
8 policy of the state of Georgia the local school boards
9 have no more than seven members on the board. While
10 this statute does contain what is essentially a
11 grandfather clause as to Georgia local school boards
12 that have wanted the seven members as of July 2010,
13 this statute does not express the State's policy
14 regarding the optimum number of school board members.
15 In other words, the letter to the superintendent
16 specifically says, grandfather clause?

17 A. Uh-huh. And -- but they would have to vote it in.
18 They would have to take a vote on it, right?

19 Q. Your statement to the Court was they were unaware
20 of it because their lawyer kept it from them. I'm
21 showing you a piece of paper that shows that's not
22 true.

23 A. And I can produce a minute that's in that same --
24 the meeting before that where the chairman of the
25 school board told Mr. Skipper that before he submitted

1 anything else to the justice department, they needed to
2 read it before he submitted it, and that was the same
3 night that I appeared before the school board, and that
4 was when I made it clear and I challenged Mr. Skipper
5 on that very issue, that he had withheld that
6 information. And then you also note that in the very
7 next day after he was asked to start letting them read
8 the information prior to him sending any more
9 information to the justice department, he resigned.

10 **MR. NESMITH:** Your Honor, that was a
11 tremendous freight train of hearsay, which I'll object
12 to.

13 **MR. WRIGHT:** That wasn't hearsay. I was
14 present. I'm speaking from what I was present to hear.
15 That's not hearsay.

16 **THE COURT:** Well, we don't want to get into a
17 fight about --

18 **MR. NESMITH:** Okay.

19 **THE COURT:** -- about the niceties of hearsay.

20 **MR. NESMITH:** That's right.

21 **THE COURT:** Hearsay is basically attributing
22 someone else's statement who is not present here to
23 testify about it.

24 **MR. NESMITH:** And be asked.

25 **THE COURT:** That's what it's about. But I

1 have a further question to get a clarification --

2 MR. NESMITH: Sure.

3 THE COURT: -- because some of the issues are
4 coming back to me because we spent quite a bit of time
5 on, I think it was the Byrd case was the name of the
6 plaintiff.

7 MR. NESMITH: That's correct, Your Honor.

8 THE COURT: Was that, when you are speaking
9 of contact with the Department of Justice, this was for
10 preclearance purposes --

11 MR. NESMITH: That is correct.

12 THE COURT: -- which means that the
13 legislation itself would have already been passed and
14 signed; is that correct?

15 MR. NESMITH: That is correct.

16 THE COURT: All right.

17 MR. NESMITH: That is correct, but --

18 THE COURT: What became moot with the --

19 MR. NESMITH: And I understand there's -- I
20 don't have anything that says what may have been said
21 before the submission was done, but, nevertheless, you
22 know, the board unanimously voted to do what they did,
23 and that's really the point, before the General
24 Assembly acted. Unless I -- can move on if the
25 Court --

1 **THE COURT:** Yeah, you can move on. I'm just
2 trying to keep the --

3 **MR. NESMITH:** Timeline.

4 **THE COURT:** -- matters in mind.

5 **MR. NESMITH:** Got you. Perfect.

6 **MR. WRIGHT:** But, Your Honor, because Section
7 5 and 4 was in place, so because it -- because it was
8 in place, then that particular proceeding and that
9 particular law still would be subject to it, even
10 though it got removed later, would it not be?

11 **THE COURT:** I don't want to make any rulings,
12 but as I remember from the Byrd case, it was under
13 consideration by the Department of Justice, and the
14 current board withdrew their request that it be
15 precleared.

16 **MR. NESMITH:** That's correct.

17 **THE COURT:** That's my memory.

18 **MR. NESMITH:** That's correct.

19 **MR. WRIGHT:** And that they --

20 **THE COURT:** That -- affect then, if under the
21 law it was not preventing it from being considered. I
22 don't know what purposes were. But that's my memory,
23 was that -- was that was why the Court initially
24 established its decision to redraw the nine so that
25 they would be in balance because there was not a

1 precleared legislation for the five plus two.

2 **MR. NESMITH:** That's correct.

3 **THE COURT:** And that was the case because the
4 board had withdrawn it, but then the supreme court
5 decided it wasn't necessary.

6 **MR. NESMITH:** That's right --

7 **THE COURT:** That how we get to, partially
8 where the case -- what the Court's last ruling was
9 based on.

10 **MR. NESMITH:** Right, that's correct.

11 **MR. WRIGHT:** May I, Your Honor?

12 **THE COURT:** Yes, sir.

13 **MR. WRIGHT:** And then, that's why we are
14 here, because what we're asking you to rule on is
15 whether or not the proposed plan will violate Section 2.

16 **THE COURT:** Yeah, I understand. I
17 understand. I understand your point. All right. But
18 today we're here with regard to, not to ultimately
19 decide those -- the merits of your assertion, but
20 whether or not there's a basis that the Court should
21 take the extraordinary act of preventing the election
22 from happening at all. All right. Do you have further
23 questions, Mr. NeSmith?

24 **MR. NESMITH:** Yes, I do.

25 **BY MR. NESMITH:**

1 Q. Okay. Well, let me ask you something, Reverend
2 Wright. I understand that from your complaint and what
3 you're saying is that your real interest is truly in
4 the children of the school system of Sumter County;
5 isn't that correct?

6 A. Correct.

7 Q. And that you believe that for these children to
8 succeed and thrive in society that they must have good,
9 solid education; is that correct?

10 A. Correct.

11 Q. And you would agree with me that if the
12 accreditation of the Sumter County School System was
13 removed, that would be a devastating event to the
14 children of Sumter County, correct?

15 A. No.

16 Q. So losing accreditation of your high school and
17 not being able to enter to college would not be
18 devastating?

19 A. Not from SACS, because I have complained to SACS
20 in 2008, and the documents over there will support it,
21 about the exact same complaints that they were -- acted
22 on now, and they said that the then majority white
23 school board was not subject to them intervening and
24 interposing any rule that they had voted on. But now,
25 those same SACS people, that in a majority of

1 80 percent black students, say they care more about
2 them than I do. And I say that that's a lie because
3 the documents that I have that when we made those same
4 complaints that are being made now to SACS, SACS
5 ignored us. They even ignored us to the point where
6 there was a school teacher had abused black students
7 that got a true bill, and they still didn't come help.
8 They ignored us when we proved that the justice
9 department came in and did an investigation and found
10 that they were changing black students grades with the
11 then majority white board. And then you're going to
12 tell me that they care about those students more than I
13 do? How is it that they can come now when a -- when
14 they are white people complaining. When we were
15 complaining, it fell on deaf ears. The evidence is
16 there on the desk, all the way back to 2008. The
17 justice department came in and did an investigation and
18 found that for eight years, eight years they were
19 changing black students grades to assure that they
20 always had a white valedictorian. That was given to
21 SACS. That was taken to the then majority school
22 board. That was the Robert E. Seaberg scholarship that
23 they would never let black students qualify for. That
24 was given to SACS. SACS never came. It was given to
25 Mike Cheokas. Mike Cheokas never came. It was given

1 to then Senator George Hooks. He never came. Sanford
2 Bishop, John Lewis, and the list go on. The only
3 somebody came was the justice department, and then the
4 school system, under the white majority board, entered
5 into a voluntary agreement to fix it. But the people
6 that were doing it they -- they never came in under any
7 type of accreditation violation. But now, because you
8 say stakeholders can't talk at meetings, the Sunshine
9 Act, can't do -- those same complaints were made. So
10 that's why I said, no, not SACS, because they have
11 proved by the facts that they don't have our best
12 interest at heart. They don't have the black
13 children -- but the school system is a good system. I
14 don't have nothing because I graduated, my kids went
15 through, I have a son that went to West Point,
16 graduated.

17 **THE COURT:** Mr. Wright, now.

18 **MR. WRIGHT:** But what I'm saying is --

19 **THE COURT:** Just a minute now. You made a
20 long talk about your points, but the issue, as I
21 understood the question, was whether or not the lack of
22 accreditation would have, I guess, a negative impact on
23 students in the system, whatever you may think about
24 SACS, whether the loss of accreditation would have any
25 negative impact on the students.

1 **MR. WRIGHT:** It would.

2 **THE COURT:** That's the question as I
3 understood it.

4 **MR. WRIGHT:** It would, but I had to get that
5 out.

6 **THE COURT:** I let you get it out, but I had
7 to stop you.

8 **MR. NESMITH:** And I did too.

9 **THE COURT:** All right. Okay.

10 **MR. NESMITH:** All right, Your Honor, thank
11 you.

12 **BY MR. NESMITH:**

13 **Q.** Well, Mr. Wright, on December the 3rd -- if I may
14 approach again?

15 **THE COURT:** Yes, sir.

16 **BY MR. NESMITH:**

17 **Q.** -- on 2013, the superintendent of the Sumter
18 County School System receive a letter from Ms. Annette
19 Bohling, the chief accreditation officer for SACS, who
20 said that if the school board does not have an election
21 on the five plus two as ordered by the federal court,
22 that there's a great danger of losing accreditation,
23 correct?

24 **A.** But it's my understanding that federal court --

25 **Q.** If I could get you just to answer first and then

1 explain.

2 **THE COURT:** Yeah, that would be the proper
3 way to do, Mr. Wright, if you can answer the question
4 as he asked you and then if you need to explain.

5 **BY THE WITNESS:**

6 **A.** Well, I haven't seen this document, but I'll take
7 you at your word that's what it says. And so if that's
8 what it says, then so be it, but then I would also say
9 that SACS do not have any jurisdiction to dictate to
10 any board about what they are supposed to do and how
11 they are supposed to do it. I think SACS is outside of
12 their scope of what they're supposed to do. They're
13 not supposed to dictate about how we or how the board
14 redistrict themselves. It's supposed to be about the
15 quality of the education that the students are
16 receiving, and certainly with this document and they
17 are saying that, well, from what I understand that the
18 school board also got accreditation from another system
19 that said that they were good, that wasn't SACS.

20 **THE COURT:** All right. Do you have another
21 question?

22 **MR. NESMITH:** Let me see.

23 **BY MR. NESMITH:**

24 **Q.** Yeah, there is one last thing. One of the things
25 that you did mention is you said that in the *Edge*

1 decision that -- and I'm just talking about voting, and
2 I do understand the differences in state, federal, and
3 local election. So if I can just get you to answer my
4 question, you would agree that Congressman Sanford
5 Bishop has run for election and Sumter County is in his
6 congressional district, correct?

7 A. Yes.

8 Q. And you would agree that he has quite handedly won
9 election in Sumter County every single time he's run
10 but twice, correct?

11 A. I don't know that, and I haven't kept up with it
12 like that. I know he's won, but what counties he won,
13 I don't know.

14 Q. Okay. Would it surprise you to know that he has
15 won very handedly in Sumter County every single time
16 except for twice, the first time he ran and one other
17 time?

18 A. Knowing Sanford, no, it don't surprise me.

19 Q. Okay. And are you -- you would agreed that Mike
20 Cheokas, who is a white candidate, ran last time and
21 was opposed by a African American candidate from Marion
22 County, are you aware of that?

23 A. Yes.

24 Q. And are you aware that at-large Mr. Cheokas lost
25 in Sumter County to the African American challenger?

1 **A.** That's correct.

2 **Q.** Okay. And --

3 **A.** May I --

4 **Q.** No, just until I get through with my questions,
5 and if --

6 **A.** Okay.

7 **Q.** -- you can explain all you like, if that's pleases
8 the Court.

9 **THE COURT:** That's my point.

10 **BY MR. NESMITH:**

11 **Q.** Okay. And then the last one is that in the
12 president election you would agree that President
13 Obama, who was challenged by a white challenger,
14 carried Sumter County very handedly?

15 **A.** Correct.

16 **Q.** Which means, if you look at the statistics, that
17 white people had to vote for Mr. Bishop, had to vote
18 for President Obama, and had to vote against Mike
19 Cheokas, correct?

20 **A.** Probably so.

21 **Q.** Okay. That's the questions that I have.

22 **THE COURT:** All right. Now, Mr. Wright, we
23 can do this, based on any question that he asked you,
24 you need to respond to, you do that now.

25 **MR. WRIGHT:** Okay.

1 **THE COURT:** I know you've made some responses
2 already, you don't have to repeat them.

3 **MR. WRIGHT:** All right.

4 **THE COURT:** But if there's something you have
5 to say in response to those questions that you have not
6 already had the opportunity to say. I'm not suggesting
7 that you do, I'm just want to make sure that you have
8 that opportunity if you wish to respond.

9 **MR. WRIGHT:** No, I don't need to respond.

10 **THE COURT:** All right. Then you may step
11 down.

12 **MR. NESMITH:** I could stay right here --

13 **THE COURT:** We'll find out from Mr. Wright if
14 he has any evidence he wishes to present.

15 **MR. NESMITH:** That's right.

16 **THE COURT:** All right. Mr. Wright, you've
17 given your testimony, is there any other witness or
18 evidence that you wish to present in support of your
19 motion -- of your motion?

20 **MR. WRIGHT:** One minute, sir. At this time,
21 Your Honor, there is nothing else that I want to enter
22 at this time, and I guess at this point I could proceed
23 with calling witnesses if I need to?

24 **THE COURT:** Yeah, that's -- when I say
25 evidence that's what I --

1 **MR. WRIGHT:** Okay. At this time, if it
2 pleases the Court, I'd like to call Ms. Edith Green.

3 **THE COURT:** Edith Green.

4 **MR. WRIGHT:** Edith Ann Green.

5 **THE COURT:** All right. You need to let her
6 know. She should be out there.

7 Ms. Green, if you would come forward and -- where
8 the officer is standing and be sworn please.

9 **COURTROOM DEPUTY:** Do you solemnly swear or
10 affirm that the testimony you are about to give in the
11 case now before the Court will be the truth, the whole
12 truth, and nothing but the truth?

13 **THE WITNESS:** Yes, I do.

14 **THE COURT:** All right. You may proceed, Mr.
15 Wright.

16 **DIRECT EXAMINATION**

17 **BY MR. WRIGHT:**

18 **Q.** Ms. Green, are you a member of the Sumter County
19 Board of Education?

20 **THE COURT:** If you would, just for our
21 record, would you have her state her full name for the
22 record?

23 **MR. WRIGHT:** All right, sir.

24 **BY MR. WRIGHT:**

25 **Q.** Will you state your full name for the record?

1 A. Edith Ann Green.

2 **THE COURT:** All right. You may go ahead with
3 your questions.

4 **BY MR. WRIGHT:**

5 Q. And are you a member of the Sumter County school
6 board?

7 A. Yes, I am.

8 Q. And are you the chairperson of the Sumter County
9 School?

10 A. Yes, I am.

11 Q. How long have been the chairperson of Sumter
12 County School Board?

13 A. This is my fourth year.

14 Q. So you became chairperson when?

15 A. 2011.

16 Q. '11. At that particular time -- and I want to
17 take you back to a time in December of 2011, if you can
18 remember, where a vote was presented to you all or came
19 on the floor that -- about the 5/2 redistricting plan.
20 Do you remember that?

21 A. 2011?

22 Q. Or -- was it 2011 when the -- well, when did you
23 all first become aware of the 5/2 plan?

24 A. I first became aware of it probably -- and let me
25 get it straight. The 5/2 plan, that was the -- the one

1 that written. Is that what your asking?

2 Q. Yes. I'm asking when did you become aware of the
3 5/2 plan, the new proposal of the redistricting?

4 A. The new proposal?

5 Q. Yes, ma'am.

6 A. There have been two, now. So I'm a little
7 confused.

8 Q. All right. When --

9 A. The first, the initial one, that one came around
10 in April after it was signed into law.

11 Q. In April of what year?

12 A. Probably 2011.

13 Q. All right. And who made you aware of that plan?

14 A. Hmm, the governor's assistant contacted us,
15 contacted me, and ask if I was in agreement with it --
16 if that's the one you're talking about now.

17 Q. Okay. Well, I just want to know about when you
18 became aware of the 5/2 plan and who made you aware of
19 it?

20 A. The governor's assistant.

21 Q. All right. After that, was there a conversation
22 ever with the school board's attorney about the 5/2
23 plan?

24 A. We did have a conversation, not about the plan, as
25 such, but there were some other things that took

1 place -- I'm confused.

2 Q. Well, tell us then, the Court, what are those
3 little things that took place?

4 A. Well, after that 5/2 plan had been become law, I
5 guess -- we didn't know about it initially. The school
6 board did not know about it. After it became law, I
7 and another school board member went to the attorney
8 and asked questions about it, and we found out some
9 things about it. But prior to that, we did not know
10 about the plan.

11 Q. Now, let's back up a little. When was that
12 meeting with the attorney?

13 A. I met with the attorney in April.

14 Q. Of what year?

15 A. I believe 2011, because I was the chairman, and I
16 met with him again, maybe in July of the same year.

17 Q. Okay.

18 A. But prior to then, we had not met with the
19 attorney or discussed that plan.

20 Q. Okay. And in December do you recall a vote being
21 taken to adopt the 5/2 plan?

22 A. Not to adopt the 5/2 plan. We voted to work out
23 the details.

24 Q. Say that again?

25 A. We voted to work out the details for a plan, if it

1 was 5/2 or whatever, but we never adopted the 5/2 plan,
2 I recall.

3 Q. Okay. After that particular vote in December of
4 2011, did the board change its look or face, did
5 someone replace anyone?

6 A. Now, in 2011, January of 2011, we did have a new
7 board member to come on.

8 Q. And who was that?

9 A. Kelvin Pless.

10 Q. So he came on in 2011?

11 A. In '11, and we also had another new board member,
12 Mr. Lopez, I believe. I think Mr. Lopez, and this was
13 after the election. There were two board members.

14 Q. Well, you said that you and another board member
15 went to see Attorney Skipper?

16 A. We did.

17 Q. And what was that meeting about?

18 A. It was about the 5/2 plan that had been passed by
19 the governor.

20 Q. And what was discussed in that meeting?

21 A. We discussed how we would go from nine board
22 members to seven, what would take place, how it would
23 happen, because we were not familiar.

24 Q. Say that again?

25 A. We were not familiar --

1 Q. Okay.

2 A. -- with what was to take place. We had not seen
3 the legislation that went up.

4 Q. So, when -- let me get something clear. The vote
5 that you all took in December that year, before Pless
6 came aboard, were you aware of the plan then?

7 A. No. No.

8 THE COURT: All right, now, I understand that
9 Pless or somebody came on in January of 2011.

10 MR. WRIGHT: Right.

11 THE WITNESS: '11, uh-huh.

12 MR. WRIGHT: Right, but the vote was
13 December 2010, before Pless came.

14 THE COURT: I don't know about 2010. She
15 mentioned December of 2011.

16 MR. WRIGHT: I might have -- an error, it was
17 '10; it's not '11.

18 THE COURT: All right. Well, you need to ask
19 the witness that.

20 MR. WRIGHT: Okay. I'm sorry. But I'm just
21 going by what I have in the notes. I misquoted the
22 year.

23 BY MR. WRIGHT:

24 Q. So let's back up. Was there a vote taken in
25 December 2010, when you all first voted on it when --

1 before Mr. Pless came aboard?

2 A. I'm not sure about the date before he came.

3 Q. Okay.

4 A. I can't be sure about the date. But what we were
5 voting for was to take a look at the plan, at any plan,
6 in fact. We never voted on the legislation itself.

7 Q. Okay. And at some point did the board submit a
8 plan to the justice department?

9 A. We did.

10 Q. And the plan that was submitted, were you involved
11 in the -- putting that plan together?

12 A. Well, wait a minute. What we submitted the
13 justice department was withdrawing the submission.

14 Q. I know that, but I'm trying to find out about the
15 plan itself now.

16 A. The plan itself?

17 Q. Right. Now, the plan that went to the justice
18 department, you being chairman of the board, were you a
19 part of the process of what was submitted and prepared
20 to be submitted?

21 A. No.

22 Q. And when did you find out about what had been
23 submitted?

24 A. We --

25 MR. NESMITH: Your Honor, can I interrupt for

1 just one second quickly?

2 **THE COURT:** Yes.

3 **MR. NESMITH:** In light of this testimony
4 there is somebody in this room that I am going to need
5 to testify that I had no idea, and we have invoked the
6 rule, and so I would have to at this point ask with the
7 Court's indulgence to have this person step out to be
8 able to testify, which is going to be a direct rebuttal
9 to what's being said.

10 **THE COURT:** Okay. Who is that witness?

11 **MR. NESMITH:** That would be Ms. Crinson.

12 **THE COURT:** All right. If Ms. Crinson will
13 step out of the courtroom.

14 **MR. NESMITH:** Thank you, Your Honor.

15 **THE COURT:** All right. You may continue.
16 And do not discuss anything that you've heard with
17 anybody else.

18 **THE WITNESS:** Yes, sir.

19 **BY MR. WRIGHT:**

20 **Q.** At what point did you learn about the plan that
21 had been submitted?

22 **A.** To the justice department?

23 **Q.** Yes, ma'am.

24 **A.** It was between April and July, I believe, on that,
25 2010.

1 Q. And what made the board decide to withdraw the
2 plan?

3 A. After we looked at the plan and tried to make some
4 sense of it because we didn't understand it, we
5 realized that we were in violation of some part of the
6 Voting Rights Act.

7 Q. And --

8 A. When we knew -- well, we were in violation of
9 Section 2 of the Voting Rights Act.

10 Q. And at any time after that plan was withdrawn, or
11 before it was withdrawn, did the board vote to have
12 nine districts?

13 A. Yes, after the plan was -- yes.

14 Q. And do you recall when that might have been?

15 A. I cannot give you dates. I don't have those in
16 front of me.

17 Q. After the plan was withdrawn, did you --

18 THE COURT: Well, the plan wasn't withdrawn,
19 was it? It was the preclearance that --

20 THE WITNESS: Right.

21 THE COURT: -- the preclearance request that
22 was withdrawn.

23 MR. WRIGHT: Yes, sir. The preclearance
24 request.

25 THE COURT: The Board of Education wouldn't

1 have the authority to withdraw a state passed law,
2 would they, not just by them voting?

3 **MR. WRIGHT:** Well, I guess that's why it was
4 kind of hard for me to say based on a letter that I
5 received from the governor in 2009, in that particular
6 letter -- which was then Governor Sony Purdue -- in
7 that particular letter, that's what he indicated to me
8 what I approached him about some of the issues we were
9 having, he sent me back to the board and said that they
10 had the authority to make local legislation.

11 **THE COURT:** Yeah, they can propose, as I
12 understand the rule, that there are certain things even
13 though it's local, since it's an arm of the state, the
14 state has to pass a law, but it arises from the local
15 suggestion that this is a change that you want to make,
16 and then it goes up and can be adopted or not by the
17 state. But once the state law is passed, the simple
18 vote of a local board can't change that law, as I
19 understand it, would not be able to change the -- in
20 other words, if 5/2 passed the state, the Board of
21 Education couldn't simply say, now we want it to be
22 nine in derogation of the law as passed by the state.
23 It doesn't say they can't challenge it, but I'm just
24 saying, a simple vote by the board would not change it
25 back to a nine-member board as I understand it.

1 **MR. WRIGHT:** No, sir, I can --

2 **THE COURT:** Is that your --

3 **MR. WRIGHT:** I can -- I can understand that.

4 **THE COURT:** Okay. Let us do this. It's
5 already 12:30, and we need to go ahead and break for
6 lunch, and we'll return at 2 o'clock to continue the
7 evidence. All right. We're in recess.

8 *(RECONVENED; ALL PARTIES PRESENT, at 2:25 p.m.)*

9 **THE COURT:** All right. Mr. Wright, you may
10 continue. You may continue with your questions.

11 **MR. WRIGHT:** Thank you, Your Honor.

12 **BY MR. WRIGHT:**

13 **Q.** Ms. Green, at -- when the plan that was submitted
14 to the justice department, was that plan approved?

15 **A.** No. Your Honor, may I?

16 **THE COURT:** If you need to explain your
17 answer, you may do so.

18 **MR. WRIGHT:** Yes.

19 **THE COURT:** But otherwise, I let the lawyers
20 ask the questions.

21 **THE WITNESS:** Okay.

22 **BY MR. WRIGHT:**

23 **Q.** If you need to explain it, yes.

24 **A.** No. It was never approved by the Board of
25 Education.

1 Q. But I want to know was it ever -- was it ever
2 approved by the justice department?

3 A. Oh, I'm sorry. No. It was not.

4 Q. All right.

5 A. The submission was withdrawn, and we withdrew the
6 submission because we realized we violated Section 2 of
7 the Voting Rights Act. When we studied it, we saw that
8 we were in violation of Section 2. Also, we found out
9 that the justice department had been asking for
10 additional information, and that information was being
11 sent without our knowledge or our consent as well. And
12 so, we knew -- and some of the information was
13 erroneous, and we felt like -- and we withdrew our
14 submission. But the board never, never voted on
15 either -- on the two local legislations that were
16 introduced, and the records will show that.

17 Q. So the justice department wrote back that there
18 were some problems with what had been submitted?

19 A. Yes. They did. Twice -- three times we know
20 about, and we asked our attorney to not send any more
21 information that we were not made aware of.

22 Q. And when you asked the attorney not to submit
23 information without making the board aware, what
24 happened?

25 A. He resigned.

1 Q. Do you recall what were the issues that the
2 justice department had with the submission?

3 A. I believe the issues were the percentage of
4 voting -- voting age people -- I'm not sure, but I
5 think maybe percentage of voting age and diluting the
6 black vote, and whether or not even blacks had ever won
7 a countywide or a citywide election in Sumter County or
8 local election, local, county-city.

9 Q. All right.

10 MR. WRIGHT: Your Honor, I have no further
11 questions of at this time for this witness.

12 THE COURT: Cross examination, Mr. --

13 MR. WRIGHT: But I do have to ask you one
14 other thing. I didn't know that she was here until we
15 took lunch. There is another person that's in the
16 courtroom. I don't know how long she's been here. But
17 I hadn't made contact with her, but I would like to
18 have her sequestered if it's not too late.

19 THE COURT: Was she subpoenaed?

20 MR. WRIGHT: Ma'am -- sir?

21 THE COURT: Was she subpoenaed?

22 MR. WRIGHT: No, sir.

23 THE COURT: Well, we've got limited time.

24 MR. WRIGHT: Okay.

25 THE COURT: Just as a precaution, I don't

1 want to pre-decide anything, but I understand there
2 were five or six people who had been subpoenaed and
3 we've got limited time for me to hear the issues.

4 **MR. WRIGHT:** All right sir.

5 **THE COURT:** Which -- identify who the person
6 is?

7 **MR. WRIGHT:** She's a current board member of
8 the -- and it's Willa Fitzpatrick.

9 **THE COURT:** All right. Ms. Fitzpatrick, if
10 you will wait outside just in case you might be called.
11 All right. Mr. NeSmith?

12 **CROSS EXAMINATION**

13 **BY MR. NESMITH:**

14 **Q.** Ms. Green, my name is Bill NeSmith, and I'm
15 representing the Sumter County Board of Elections who
16 have been sued in the lawsuit, and I have a few
17 questions for you. I want to make sure I'm clear on
18 this, when were you first elected to the Board of
19 Education?

20 **A.** 1994 was the first time I was elected to the
21 Americus city board, and in '95 to the Sumter County
22 board. But prior to that, I served on the Americus
23 city board as an appointed board member.

24 **Q.** So in 2010, you were on the Board of Education?

25 **A.** I was.

1 Q. Okay. All right. And you said that the plan,
2 which was to reduce -- there's two out there, and I
3 want to make sure we're clear about that. There were
4 two bills, one that reduced the size of the school
5 board from nine members to seven, which would be with
6 two at-large, and then there was another, which was the
7 actual districting plan. One was plan 154, and the
8 other was 4EX, both of these are senate bills. Are you
9 familiar with that?

10 A. I'm familiar with two plans.

11 Q. Okay. And -- well, one is to reduce the size of
12 the school board?

13 A. Uh-huh.

14 Q. Okay. And you're saying that you never voted or
15 your board never voted to approve that?

16 A. I'm saying we never voted to approve it.

17 Q. Okay.

18 A. In fact, we didn't know that it existed until
19 after it had been signed into law by the governor.

20 Q. Okay. So what you're saying is that the school
21 board attorney, Jimmy Skipper, went out on his own and
22 got the General Assembly to pass legislation on his own
23 without the permission of the school board?

24 A. I don't know if Jimmy Skipper did it, or somebody
25 else did it, but the school board never voted on that

1 legislation.

2 Q. Okay.

3 A. And the records will show that. We never voted on
4 the legislation.

5 Q. All right.

6 A. We voted to look into reducing the size of the
7 school board. We never had Mr. Skipper come to us and
8 say anything to us about it, even though we asked. I
9 was not the chairman at that time, but when I became
10 chairman and when I found out that this bill had been
11 passed, I went to Mr. Skipper and that was the first
12 time that I knew about anything of that bill.

13 Q. Okay. So he or somebody just went out and did it
14 on their own?

15 A. Yes.

16 Q. Okay. And then you were told, or you said you
17 became aware, that the plan was in violation of the
18 Voting Rights Act?

19 A. When we read the plan, we realized it was.

20 Q. Okay. And who realize -- how did you realize
21 that?

22 A. By reading the at-large votes. At-large votes,
23 and we looked at the Voting Rights Act, I did.

24 Q. What does the Voting Rights Act say then?

25 A. About Section 2, in a nutshell, that at-large

1 districts in our area are in violation.

2 Q. Okay. So the --

3 A. Because that was done in the 60s, '65 when black
4 people were -- didn't have and still don't have the
5 resources or the influence to carry at-large districts.
6 We still don't.

7 Q. You mean --

8 A. And a lot of things indicate that's what happened
9 here.

10 Q. Don't have enough voters, is that what you're
11 saying?

12 A. And don't have the influence or the money or the
13 resources.

14 Q. So what you're saying is, is if there's -- there's
15 not sufficient enough African American voters to be
16 able to elect someone at-large, and that as such then
17 only white people are going to get elected?

18 A. And that's from the history of our local
19 community, sir.

20 Q. Yeah, but --

21 A. That's the history of my local community, and I
22 believe that to be so. The federal government thought
23 it so all those years ago, and it's still in existence.

24 Q. You got anything from the federal government that
25 shows that?

1 A. No, I don't have anything in my hand to show that,
2 but that is the law.

3 Q. Okay. Would it surprise you to know that in July
4 of 2013, which is closer in time to when we were doing
5 all of this, that there were 7,807 active, not
6 inactive, but active African American voters in Sumter
7 County. Would that be surprising?

8 A. Yes.

9 Q. Okay. What would you think, it would be more or
10 less?

11 A. Less. And how many white votes were there?

12 Q. 7,726.

13 A. 7,726 black active voters, but what I --

14 Q. No, ma'am. I said black active voters are 7,807.

15 A. Okay.

16 Q. White active voters are 7,726.

17 A. Okay.

18 Q. Does that surprise you?

19 A. Yes, it does.

20 Q. And it can vary. It can go up and down as people
21 move in and out, in and out in the things that they do.
22 Some people become inactive, so it's a moving target,
23 does that make sense?

24 A. Yes, it does.

25 Q. Okay.

1 A. But still those numbers -- the history in Sumter
2 County, local precedent on the black lanes has one
3 election at-large in Sumter County.

4 Q. How many times has that happened? How many
5 at-large elections have happened in Sumter County where
6 African Americans were not voted in?

7 A. Well, I can tell you Mary Kay Finch Bell ran for
8 justice of the peace some time ago.

9 Q. When was that? Because we hadn't had a justice of
10 peace in --

11 A. I know she ran, and she was defeated.

12 Q. Okay.

13 A. William Halston ran for sheriff, was defeated.

14 MR. WRIGHT: Answer the question.

15 BY THE WITNESS:

16 A. Nelson Brown ran, was defeated. All of those are
17 blacks who have run local races in Sumter County and
18 were defeated. So our history has shows --

19 BY MR. NESMITH:

20 Q. How many is that -- I'm sorry, because in the
21 middle of that Mr. -- Reverend Wright --

22 A. I gave him three names.

23 Q. Three names. Okay.

24 A. Of people I know.

25 Q. Somebody that was a justice of peace, so that

1 would have been back in maybe the 60s?

2 A. Uh-huh, maybe.

3 Q. Okay. And then we had Mr. Brown and who else?

4 A. William Halston.

5 Q. Okay. So three people have run and were defeated?

6 A. And they all were all defeated and they all were
7 African Americans.

8 Q. Okay. Now, one thing that you said is that --
9 that the -- when you started looking at Section 2, you
10 were saying that there were some problems with the U.S.
11 Department of Justice, they were saying there were
12 issues with it, that they had a lot of problems with
13 those districts, those five districts, plus the
14 at-large districts, isn't that correct? Isn't that
15 what you said?

16 A. I said at-large, in particular.

17 Q. Yeah, but they -- they had problems with all of
18 it?

19 A. Okay.

20 Q. Isn't that what you said?

21 A. I said at-large in particular.

22 Q. I understand that part. So are you saying the
23 justice department had no problem with the five
24 districts?

25 A. I said they had problems with at-large in

1 particular for the Board of Education.

2 Q. I understand that. And here's my question.

3 A. Okay.

4 Q. What I want to know is, did the U.S. Department of
5 Justice have no problems at all with the five
6 districts, not the at-large, just the five-one-person,
7 you know, one-member district?

8 A. I know that they kept writing for information.
9 I'm not on that --

10 Q. So you don't know if they had a problem or not?

11 A. I think they did. Yes, they did have a problem
12 with that.

13 Q. Okay. And those were identical to the Sumter
14 County Board of Commissioner districts, are they not?

15 A. Yes, they are.

16 Q. And those were approved by the U.S. Department of
17 Justice, correct?

18 A. That's fine.

19 Q. Okay. So let me ask you this, do you think that
20 it would be in the public interest if the Sumter County
21 board of schools lost their SACS accreditation?

22 A. Do I think it would be what now?

23 Q. Well, do you think it would be in the best public
24 interest for Sumter County schools to lose their SACS
25 accreditation?

1 A. I think Sumter County Board of Education would
2 like to keep their SACS accreditation, but I also know
3 that we have a dual accreditation. But this is a
4 community problem that we're facing here.

5 Q. Well, that's -- I understand what your opinion is,
6 but, now, here is my question, again. I just want to
7 be sure. Do you think it's in the best interest of the
8 public for the Sumter County schools to lose their
9 accreditation with SACS?

10 A. No, I don't think it's in the best interest of the
11 public, but, also, I think it's not in the best
12 interest of the public for us to hold an illegal
13 election just to hold accreditation with SACS.

14 Q. Okay.

15 A. We have to obey -- we have to have a legal
16 election, and when we put things out in our community
17 that are not, and it's going to affect our community
18 for years, our students have been -- for years.

19 Q. The election --

20 A. So I think it's in the best interest to get it
21 right now.

22 Q. Of the election that's being held, there was an
23 order from this court that said that that was the law
24 of state of Georgia, therefore -- you'd agree that's
25 legal election, wouldn't you not, if the Court said so?

1 A. I don't understand your question, Mr. NeSmith.

2 Q. Well, the Court had an order that said that the
3 five plus two was the law of the land and that it was
4 retroactive back to September of 2011, which means it's
5 the law. If it's the law, then it's not illegal, is
6 it?

7 A. Well, I think it's because it wasn't challenged in
8 this particular matter.

9 Q. You mean it wasn't challenged as it is now under
10 Section 2?

11 A. Right.

12 Q. Okay. But your saying it's illegal, that's just
13 your opinion, is it not?

14 A. Well, Mr. NeSmith, when local legislation is
15 written that the school board knew nothing about that
16 concerns the school board, I don't think that's what we
17 should be adhering to. And local legislation was
18 written with an effective date after it becomes a law,
19 but it was implemented before it became a law.

20 Q. What was implemented before it became to be a law?
21 I don't know what you're saying.

22 A. The local legislation that was presented recently
23 that the Board of Education did not know about.

24 Q. The -- okay. You're talking about the local
25 legislation that was introduced by Representative

1 Cheokas?

2 A. Right.

3 Q. Okay. And the local delegation can do that and
4 can provide legislation to the General Assembly just
5 as -- there are a lot of laws that are passed in the
6 state, you would agree, that we all don't have
7 knowledge of until after they're passed?

8 A. I'll agree with that, but when it's local
9 legislation concerning the Board of Education, we
10 should at least have been made aware of it.

11 Q. Well --

12 A. And not only that part about the election, there
13 were some other things in that local legislation that
14 affected only the Board of Education that we had no
15 knowledge of.

16 Q. Okay.

17 A. We didn't have any knowledge of the first -- we
18 didn't have knowledge on the first legislation that was
19 presented, so we could not oppose two at-large seats or
20 any of it.

21 Q. Do you know Doug Goodnan (*phonetic*) is?

22 A. I do know who Doug Goodnan is.

23 Q. Was he serving on the Board of Education in say,
24 2010?

25 A. Yes.

1 **MR. NESMITH:** That's all I have.

2 **THE COURT:** All right. Any redirect
3 examination?

4 **MR. WRIGHT:** No, sir.

5 **THE COURT:** All right. You may step down.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** Is there any reason this the
8 witness cannot be excused?

9 **MR. NESMITH:** Not on my part, Your Honor.

10 **THE COURT:** All right, then you may remain in
11 court if you wish or leave if you wish. All right.
12 You may call your next witness.

13 **MR. WRIGHT:** I'd like to have Ms. Willa
14 Fitzpatrick.

15 **THE COURT:** And who is Ms. Fitzpatrick?

16 **MR. WRIGHT:** That was the one that just left.

17 **THE COURT:** Any objection, Mr. NeSmith?

18 **MR. NESMITH:** No, Your Honor, I don't object.
19 That'll be fine.

20 **THE COURT:** All right. The Court's point
21 earlier was since the witness had not been identified
22 or subpoenaed, the Court had no ability to cause the
23 witness not to be present in violation of the rule.
24 That's what that was about.

25 **MR. NESMITH:** Yes, Your Honor. I don't -- I

1 mean, I'm just trying to make things move along as
2 quickly as possible.

3 **THE COURT:** I don't have a problem with the
4 witness's testimony. I'm just saying that's a -- by
5 deciding after the fact --

6 **MR. NESMITH:** Right.

7 **THE COURT:** -- to call the witness, in
8 effect, avoids the rule. So I don't know long the
9 witness had been in court, but otherwise, since there
10 is no objection, there is no problem. I just wanted to
11 explain what the Court's concern was.

12 **MR. NESMITH:** Yes, Your Honor.

13 **THE COURT:** All right.

14 **COURTROOM DEPUTY:** Do you solemnly swear or
15 affirm that the testimony you are about to give in the
16 case now before the Court will be the truth, the whole
17 truth, and nothing but the truth?

18 **THE WITNESS:** Yes.

19 **THE COURT:** All right. You may proceed.

20 **WILLA FITZPATRICK**

21 **Witness, having first been duly sworn, testified on**

22 **DIRECT EXAMINATION**

23 **BY MR. WRIGHT:**

24 **Q.** Would you please state your name for the record,
25 please?

1 A. My name is Willa Fitzpatrick.

2 Q. Ms. Fitzpatrick, are you a member of the Sumter
3 County School Board?

4 A. Yes, sir. I have been for seven years now.

5 Q. How many years?

6 A. Seven.

7 Q. And in the year of 2010 --

8 A. Yes, sir.

9 Q. -- was there a point in time when the board was
10 approached about a new legislation that was being
11 produced in the Georgia General Assembly?

12 A. Not in 2010, we were not approached by -- about
13 any legislation in 2010. We were -- that was the year
14 that was built up to 2011, when we were later in 2011
15 approached with legislation.

16 Q. All right. In -- in December 2010, was there any
17 type of discussion or a vote taken about the possible
18 legislation of being changing from 9 to 5 singles and
19 two at-large?

20 A. No. But can I have a chance to explain exactly
21 took place?

22 Q. Yes.

23 A. What took place was in June of that year, it had
24 actually been brought up in a board meeting, and at
25 that time, you know, there were questions asked, you

1 know, were we ready for this, why were we at nine, you
2 know, because the city and the county had combined, and
3 you know, we had been at nine for so long. And at that
4 time nobody was ready to vote. We said we would think
5 about it and see what we would come up with. In
6 November of 2010, it was brought up to us again. At
7 that time we were still not ready to vote. We knew
8 there would be a change in the board in January.
9 Because at that point Donnie Minic was about to step
10 down off the board, Kevin Pless was about to step up on
11 the board, you know, and we asked at that time of the
12 board, you know, we're fixing to change over, it's the
13 end of the year, what can we do. But in December of
14 2010, it came back in front of us again. At that point
15 the decision that was made and what we voted on -- and
16 we can pull the minutes because I kind of went back
17 over by myself. We voted on at that point, if we were
18 to go to seven, we need to have a discussion on how we
19 are to get there and decide on a process of converting
20 from 9 to 7. It was never the 5/2 plan. It was just,
21 how do we get to seven if we are going to do this. If
22 we are going to lose two members, how do we get there.
23 And after 2010, I think that vote, I think that's when
24 everything just kind of went awry, if that explains to
25 what you're asking me.

1 Q. All right. So what I'm really asking then --

2 A. Uh-huh.

3 Q. -- to best of your recollection, and -- is that
4 there was never a vote to prove the plan in December --

5 A. There was never a vote not to approve the plan.

6 Q. -- in 2010?

7 A. What there was a vote on is, if we're going to
8 seven, how are we to get there. We need to have
9 discussion on how to get there, and we voted that we
10 would go to seven, but with the process of us deciding
11 how we are to get there. Never was there ever a vote
12 for anybody to produce any legislation to take us from
13 9 to 7. That happened after that off key.

14 Q. Okay. We, move forward to 2013 -- I mean, 2011.

15 A. Okay.

16 Q. In 2011, was a plan submitted to the justice
17 department?

18 A. There was a plan submitted to the justice
19 department. The same plan that had been submitted to
20 our Georgia legislatures, and by the time we knew about
21 it, it had already been approved, but at that point,
22 you know, it automatically goes over to the Department
23 of Justice. And it was -- went to the Department of
24 Justice. And I think the way we really found out about
25 that, we got a couple of calls to the -- some of the

1 people that were on the board, you know, asking
2 questions, and then that's when we got interested in
3 calling and finding out, do you already have this, and
4 we found out that they did.

5 Q. So you're saying that the school board attorney
6 never approached the board, the full board about what
7 was going on in the legislation?

8 A. No. The way we found out what was going on in the
9 legislation, hmm, we actually went to Jimmy Skipper's
10 office to ask questions, because we had seen a copy of
11 something that somebody had told us had been
12 introduced, and when we got there, he said it had been
13 introduced, and it told us exactly how we were to go
14 from 9 to 7, and that was the input we needed because
15 we needed -- when you on a school board, you have to go
16 from 9 to 7 in a systematic manner, you don't want all
17 your knowledge to disappear in one swipe. That's not
18 fair to the children of Sumter County. So, when we did
19 find out about it, we went and ask questions, who made
20 this, who decided on this, and it was like, well, when
21 we put it forth, this is what we put forth, and Jimmy
22 Skipper had already sent that forth. Now, Dr. Brooks
23 our superintendent got it, we never saw it as a full
24 board to say, you know what, this is a go, I think we
25 can -- you know, what you would like in a situation

1 like that, knowing that you're going down is the
2 opportunity for everybody to look at it and say, you
3 know what, this is a go, we can do this, it looks
4 logical, then we had never seen that. So that's where
5 all our miscommunication started taking effect at that
6 point.

7 Q. So the plan that was submitted to the justice
8 department, was it approved?

9 A. It wasn't and -- it wasn't approved, and we did
10 withdraw the preclearance, our preclearance, and the
11 reason that we did so, was simply we had gotten two
12 letters that we never saw as a board, from --

13 Q. Say that again, two letters?

14 A. We had gotten two letters that we had never seen
15 as a board to discuss, you know, what they were talking
16 about. In those letters they asked us things like,
17 hmm, did we put it in the paper when we going from 9 to
18 7, you know, did we have any community involvement, how
19 many times did we meet with the community about what we
20 were doing, hmm, they asked, did we take any kind of
21 consequences to make sure we were not diluting any --
22 the African American or the minority votes. They asked
23 questions, hmm, and some of them were about, you know,
24 what are the percentages in these districts and
25 different stuff like that. And I -- two of the

1 letters, I think, somebody had actually sent my answers
2 to -- and I'm thinking, I'm almost positive our
3 attorney because we asked for the letters and stuff
4 later, but it was too late then. They had went back.
5 But in that time frame we received a third letter.
6 Then, you know, when you get three letters from the
7 Department of Justice that what you're doing needs to
8 be looked at, you sit up and you pay attention, you
9 know what I mean, so we started -- when we paid
10 attention to that third letter and we started pulling
11 the other letters, and we've never had a community
12 meeting, we never put it in the paper about us as a
13 board going from 9 to 7. We never did any of that. So
14 we talked as a board, a full board in the open, and we
15 asked Attorney Skipper, please let us see this other
16 letter before you send it back because that was
17 erroneous information in the first two letters that you
18 sent, and as a board you are representing us, we want
19 to make sure what you said was correct. So at that
20 point, as has already been discussed, he resigned. But
21 also in that time limit we started looking at the
22 letter, and when we get that letter to withdraw our
23 preclearance, we said at that point, let's stop it and
24 let's do it right. Let's do what these letters are
25 telling us, let's have community involvement, let's see

1 what they want, you know what I mean, let's make sure
2 that these two at-large districts were not diluting the
3 vote. You know, there was time to do that and do it
4 right because we knew whatever we set in place, for ten
5 years it's out there. If it was incorrect, we've
6 messed up our voters for at least ten years. So it was
7 just important to us that we stop it and make sure it
8 was done right. I hope I answered your question.

9 **Q.** You did. Are you aware that the number of, let's
10 say, black African Americans and white people that are
11 eligible to vote is about the same in Sumter County?

12 **A.** I'm not aware of that. And I think with this --
13 and I hope I'm not elaborating too much. I think with
14 the 5/2 plan, it's not exactly -- it's not -- it's the
15 way it's drawn. The way it was drawn has difficulties,
16 for me. I'm just going to take me for example. The
17 election I'm running in March 18th, the districts are
18 pretty much all right. But when you go to the May 2nd
19 election, we have five districts. My district, for one
20 is, I'm district number three, I have, I'm going to say
21 right at 70 percent Caucasian voting. I have
22 30 percent African American. We have another district
23 that's the same thing. We have two other districts
24 that's 70 percent in the other direction, but you're
25 not going to tell me that as a county we can't draw

1 those lines any better where anybody -- any district
2 has a chance to win any election, and I think that's my
3 biggest problem with what we have.

4 **Q.** So, in other words, you're saying that the
5 minority voter has been split?

6 **MR. NESMITH:** Your Honor, that's extremely
7 leading.

8 **THE COURT:** All right.

9 **MR. WRIGHT:** Well, I'm asking did she --

10 **THE COURT:** You were making a statement, not
11 asking a question.

12 **MR. WRIGHT:** I'm sorry.

13 **THE COURT:** The witness has to state the
14 information, not be in the form of your question.

15 **MR. WRIGHT:** Yes, sir.

16 **BY MR. WRIGHT:**

17 **Q.** Have the voting strength in your district been
18 split?

19 **A.** Oh, of course.

20 **Q.** Has it been diluted?

21 **A.** Oh, of course.

22 **Q.** And --

23 **A.** My last district -- go ahead, I'm sorry.

24 **Q.** No, so you can go ahead.

25 **A.** Naw, you go ahead. I don't mean to get ahead of

1 you, go ahead.

2 **THE COURT:** Well, you ask a question, Mr.
3 Wright.

4 **MR. WRIGHT:** All right. I rest.

5 **THE COURT:** All right. Cross examination?

6 **CROSS EXAMINATION**

7 **BY MR. NESMITH:**

8 **Q.** Ms. Fitzpatrick, I'm Bill NeSmith, and I'm
9 representing the Sumter County Board of Elections who
10 have been sued in the this lawsuit by Mr. Wright.

11 **A.** Uh-huh.

12 **Q.** And I have a few questions for you.

13 **A.** Sure.

14 **Q.** How long have been on the board?

15 **A.** Seven years.

16 **Q.** Okay. So, in the seven years that you've been in,
17 how many times have you participated in a preclearance
18 with the United States Department of Justice?

19 **A.** You know what, I never have. It was an
20 interesting process.

21 **Q.** Okay. So the questions that the Department of
22 Justice asks in those letters would it surprise you to
23 know they're very typical questions?

24 **A.** It would, because if I got anything from anybody
25 asking me whether I'm diluting the vote and I send them

1 back something and say I'm not, and I know I have not
2 had a chance to look into that, it would really
3 interest me because I want to tell the Department of
4 Justice the truth if I can.

5 Q. I understand what you're saying, but what I'm
6 saying, would it surprise you to know those are typical
7 questions of the Department of Justice?

8 A. It probably would, but with three letters asking
9 the same questions, no, it wouldn't, not three letters.
10 One, yeah, you know, cause -- asking me for my answers,
11 but when you send me back the same thing three times, I
12 got to take note of what you're asking me.

13 Q. Okay. Would it surprise you to know that it's not
14 unusual to get as many as a half a dozen letters and a
15 half a dozen phone calls from the Department of
16 Justice?

17 A. No, it wouldn't. But I wonder did we get that
18 many on the preclearance for our regular commission or
19 districts.

20 Q. I would say probably as least six phone calls.

21 A. But how many letters did we get?

22 Q. I would say on the letters, at least two but --

23 A. Okay.

24 Q. But I -- maybe more than that.

25 A. Okay.

1 Q. But that's something, and I really don't need to
2 answer a question here, but since it's informational,
3 you know, that's -- it's a very typical process for
4 Department of Justice to ask these questions because
5 they're very careful and very thorough.

6 A. I think we needed to be careful and more thorough
7 with the answers that we gave them and tell them the
8 truth and that's --

9 Q. That's right.

10 A. -- what we tried to do.

11 Q. So, in other words, what you were saying is you
12 really don't have any problem with the five plus two,
13 just as long as it's done right, correct?

14 A. I think I have a problem with the five plus two
15 because they did ask about the at-large districts in
16 two of their letters. Now, I would feel better with
17 just seven, if we just drew seven districts. If we
18 don't want to go back to nine, which we already have,
19 which is working fine, because we have a very large
20 county, and the nine districts have worked for us with
21 combining two -- a city and a county school system,
22 that's why we had nine representatives. We weren't
23 just a city anymore, and we weren't just a county, and
24 those nine representatives have did well up until this
25 point. Now, if we just couldn't go back to nine and we

1 had to go back to seven, I would feel better taking two
2 at-large districts out and just drawing seven definite
3 districts, and I think we could distribute our vote and
4 our representation much better.

5 Q. Okay. You also gave out some sort of numbers
6 about your district.

7 A. Uh-huh.

8 Q. Your district is probably a little bit more closer
9 to 40 percent African American, 60 percent white; isn't
10 that correct?

11 A. No. Because the last thing that I looked at from
12 the 2010 census, and this is what you gave us, and you
13 gave it to us at a meeting that we came to when y'all
14 were drawing the lines for the county commissioners. I
15 was about 30 -- I was about 34/35 percent African
16 American, and then I had some Hispanics on the side,
17 about four percent, and then I had my Caucasians.
18 There is a big discrepancy in the representation of
19 Caucasians and African Americans in my district.

20 Q. So what you're saying is you're relying on
21 four-year old numbers?

22 A. I'm not really relying on four-year old numbers.
23 Well, we are all relying on the census when we draw the
24 lines, unless you have a new census for us to go on.

25 Q. No. I'm talking about today.

1 A. I'm talking about today.

2 Q. We're talking -- we're talking about the -- what
3 you're doing is there's a challenge to this districting
4 today.

5 A. Okay. But the lines that were drawn were drawn
6 when?

7 Q. Well, they were drawn in 2011, and then put into
8 place -- well, actually 2010 and put into place in
9 2011.

10 A. Right, and those are the lines --

11 Q. But my question to you was this, today --

12 A. Uh-huh.

13 Q. -- wouldn't it be true that your district is more
14 like 40 percent/60 percent?

15 A. The only thing I have to go on is the numbers that
16 were given. And even if they were 40/60, there still
17 is a discrepancy when you got another district that's
18 probably 70. We can draw these lines better. No
19 matter how many percentages you throw around, we can do
20 better.

21 Q. Okay. So let me ask you this one final question.

22 A. Sure.

23 Q. Is that -- this is -- and what we've really been
24 discussing here really has to do with whether people
25 politically don't like the makeup of the districts

1 because if it's -- you think there's a lesser chance
2 for you to be elected -- you don't? You think you'll
3 be elected just fine?

4 **A.** Let me explain that to you. I think there is a
5 lesser chance, but that's why I qualified again,
6 because I'm going to take that chance and get out
7 there, and if I lose, I still got to fight for the
8 children of Sumter County. Now, you know there's a
9 lesser chance with the numbers than I do, cause you
10 know how we vote in Sumter County. We vote by race.
11 That's not a secret. You can go back election after
12 election after election and see that. So the question
13 that you just asked me is not that I think I have a
14 lesser chance because I got more responsibility than
15 myself, but by the numbers, we all know I have a lesser
16 chance. That's not a secret.

17 **Q.** And that's only because it's a local election?

18 **A.** You know if -- for one, of course, because it's
19 just Sumter County. You know, I think maybe if we were
20 going countywide or -- well, not countywide -- we were
21 going -- and Schley County, you might have a better
22 chance. You need to look at the numbers there also and
23 make sure that the districts that you draw are proper.
24 That's all.

25 **Q.** What you're saying is that the people are going to

1 vote down racial lines in Sumter County?

2 A. We do. And we all know that.

3 Q. And --

4 A. They normally vote down those racial lines.

5 Q. So how do you explain Sanford Bishop winning so
6 many times with such a huge majority?

7 A. I would explain that by saying, look at what kind
8 of man you have in Sanford Bishop.

9 Q. Okay. So you don't --

10 A. You know he's going to take both. And when I see
11 what kind of man you have in Sanford Bishop, he's on a
12 national level. He's not down where we are locally,
13 and we all know locally what the problems are. So
14 that's not even a comparison. President Obama, before
15 you say it, is not a comparison in what would happen to
16 us locally in an election. And if you bringing up
17 Kevin Brown, we all know Mr. Cheokas, and we all know
18 why Kevin T. Brown took -- almost took Sumter County
19 and even --

20 Q. He did take Sumter County.

21 A. Well, we know why. We all know why. So that's
22 not a secret, so, I mean --

23 THE COURT: I don't know why. This is about
24 racial balance and --

25 THE WITNESS: Right.

1 **THE COURT:** And not about particular
2 politics. It's not about the quality of any particular
3 person as a candidate. It's not about by a party of a
4 person. So the only issue this court has is as to
5 whether there is some constitutional violation with
6 regard to voting that would have a merit in this court.
7 So when you say if a person was elected countywide, he
8 was black, and you excuse it for some nonracial reason,
9 then it seems to go against your argument.

10 **THE WITNESS:** I'm not excusing it.

11 **MR. NESMITH:** My memory, he lost --

12 **THE COURT:** No, I'm talking about anybody. I
13 mean, in other words, it's either, if race counts, it
14 counts whoever is elected.

15 **MR. NESMITH:** That's right.

16 **THE COURT:** You can't discount it and say it
17 because of who that person is --

18 **MR. NESMITH:** I agree.

19 **THE COURT:** -- or some other reason.

20 **MR. NESMITH:** I --

21 **THE WITNESS:** And -- I agree too.

22 **THE COURT:** If that's true, then race has
23 nothing to do with it.

24 **THE WITNESS:** And when I say what I said
25 about that, this is exactly what I mean, Kevin T. Brown

1 won because he actually is more well known, probably --
2 I'm not going to say well known in our area. He put up
3 a fight against Cheokas and which we all would put up a
4 fight against him, but we all know historically that,
5 if he was running again, it probably would never happen
6 again. That would never again, Judge, and like I
7 said --

8 **THE COURT:** Well, how can you say --

9 **THE WITNESS:** I'm not saying I can say that,
10 you know, and he uses that --

11 **THE COURT:** I'm not accusing you of being a
12 fortune teller or anything, but simply, how can any of
13 us ever --

14 **THE WITNESS:** He uses that at --

15 **THE COURT:** -- for certain --

16 **THE WITNESS:** He uses that Kevin T. Brown
17 because that was just something that happened in that
18 moment. And I think, you know, probably more people in
19 the way that we vote in our county got out and probably
20 voted in another direction, but we vote
21 directionalized. An at-large district stands no chance
22 for us in our county, and that's -- you know, he can
23 use Kevin T. Brown all day, but that's -- that's --
24 don't fall for that one.

25 **THE COURT:** All right. Any further

1 questions?

2 **MR. NESMITH:** I do, just a couple more.

3 **BY MR. NESMITH:**

4 **Q.** Would you agree that if the election is stayed in
5 May that it's going to cost the taxpayers of Sumter
6 County a great deal of money?

7 **A.** I think this is causing the taxpayers of Sumter
8 County a great deal of money. And I think we could
9 have -- we could have not been going through this.
10 Just like the March 18th election, we could have did it
11 properly. We did as a Board of Education a declaratory
12 to the superior court to answer all the questions that
13 we're coming now answering now. On Friday, the last
14 day of qualification in an election that meant so much,
15 we're calling counties asking them which at-large seat
16 are you running for, whether you running for the two or
17 the four-year. That should be have been decided way
18 before the election even happened. It may even decided
19 how people would have qualified. You know we rushed,
20 we rushed, and that's why we're here. It's costing the
21 taxpayers money because we just don't take the time to
22 sit back and look at what we got --

23 **MR. NESMITH:** Your Honor, this is just
24 nonresponsive to what I asked. It's not an
25 explanation. It's --

1 **THE WITNESS:** -- of course, any --

2 **MR. NESMITH:** -- it's a diatribe.

3 **THE COURT:** Just a minute now, we're in a
4 court now, this is not a political debate.

5 **MR. NESMITH:** I agree.

6 **THE COURT:** All right. Restate your
7 question, the witness may answer the question, and if
8 you need to explain your answer, you may do so, but
9 first answer the question. Ask it again.

10 **BY MR. NESMITH:**

11 **Q.** The question I want to know is, don't you agree
12 that if the election is stayed it will cause the
13 taxpayers a lot of money?

14 **A.** Any election would cause the taxpayers money, but
15 if it's done wrong, it'll probably cost them more down
16 the long run because this would not be over. The lines
17 need to be drawn correctly, and then we can have an
18 election, even if we can get them drawn before
19 May 20th.

20 **Q.** All right. Now, would you also agree that the
21 lost of accreditation by SACS would be devastating to
22 the general public and to the children?

23 **A.** Devastating? It would be crucial. That's why
24 we've taken so much time to make sure that we got our
25 accreditation back. And now that we have our

1 accreditation back, the letter that you brought up
2 earlier to Mat Wright, the lady called because we had
3 made a vote, she sent that letter, but the thing about
4 that is, we're not going to do --

5 **THE COURT:** Just one minute. See, that's the
6 problem, Mr. Wright, with a witness being in the
7 courtroom, because she's answering things that were
8 presented that were outside of the witness's
9 testimony --

10 **MR. NESMITH:** I understand.

11 **THE COURT:** -- in response to a position
12 that's raised by the other side. And that's --

13 **MR. NESMITH:** I agree.

14 **THE COURT:** But let's get to another
15 question.

16 **MR. NESMITH:** Okay.

17 **THE WITNESS:** And I won't even say anything
18 about the matter.

19 **MR. NESMITH:** I'm done, Your Honor.

20 **THE COURT:** All right. Mr. Wright, do you
21 have any further questions?

22 **MR. WRIGHT:** Just one question.

23 **THE COURT:** All right, you may ask.

24 **REDIRECT EXAMINATION**

25 **BY MR. WRIGHT:**

1 **Q.** Mr. NeSmith asked you about Kevin Brown winning
2 Sumter County?

3 **A.** Uh-huh.

4 **Q.** And do you know whether or not the district line
5 that he ran in encompassed all of Sumter County or just
6 a portion of Sumter County?

7 **A.** No, I don't really know, because, you know, that
8 spreads all the way up through Schley County. I have
9 no idea.

10 **Q.** Thank you.

11 **THE COURT:** Just for my information, if a
12 county -- doesn't countywide mean all the districts?

13 **MR. WRIGHT:** Well, Representative Cheokas'
14 line don't take in all of Sumter County.

15 **THE COURT:** You mean for representative of
16 the state house?

17 **MR. WRIGHT:** Right, Cheokas, who actually
18 introduced the bill --

19 **THE COURT:** I wasn't sure who the candidate
20 was or what office they were running for.

21 **MR. WRIGHT:** Right. And Kevin Brown
22 challenged him in the last election. So much has been
23 said about him winning Sumter County, but he didn't win
24 -- the vote wasn't in all of Sumter County. It was
25 just only in the top portion of Sumter County. So

1 Brown won where it was more heavily black people.

2 **THE COURT:** Well, I don't know -- all right.

3 **MR. WRIGHT:** Okay. But -- I just wanted to
4 clarify that. Okay.

5 **THE COURT:** That's fine. I have a better
6 understanding that it was -- that that portion of
7 Sumter County is a part of another -- of a
8 representative district that is shared with other
9 counties.

10 **MR. WRIGHT:** Right, that Representative Ryder
11 has the other part of it.

12 **THE COURT:** All right. Okay, I understand
13 now. Any further questions from the defense?

14 **MR. NESMITH:** No, Your Honor.

15 **THE COURT:** All right. You may step down.
16 Any objection to the witness being excused?

17 **MR. WRIGHT:** I rest, so I have no other
18 witnesses that I'm going to call today.

19 **THE COURT:** All right. What I'm saying is so
20 she can remain in the court if she wishes is all I'm
21 saying.

22 **MR. NESMITH:** I have no objection.

23 **THE COURT:** If she's excused, she can stay or
24 leave as she wishes.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** All right. The plaintiff has
2 rested. Mr. NeSmith, any witnesses to be presented by
3 the defendant?

4 **MR. NESMITH:** Yes, Your Honor. Let's see.
5 I'll go ahead and call meet Nita Crinson.

6 **THE COURT:** You need to step out there
7 yourself and get her.

8 **MR. NESMITH:** Okay. All right.

9 **COURTROOM DEPUTY:** Do you solemnly swear or
10 that the testimony you are about to give in the case
11 now before the Court will be the truth, the whole
12 truth, and nothing but the truth?

13 **THE WITNESS:** I do.

14 **THE COURT:** All right. You may proceed.

15 **MITA CRINSON**

16 **Witness, having first been duly sworn, testified on**

17 **DIRECT EXAMINATION**

18 **BY MR. NESMITH:**

19 **Q.** Ms. Crinson, would you please introduce yourself
20 to the Court and give your full name?

21 **A.** My name is Mita DuBois Crinson.

22 **Q.** And, Ms. Crinson, do you currently serve with the
23 Sumter County Board of Elections?

24 **A.** Education.

25 **Q.** I said it. I've done that three times.

1 Education.

2 A. Yes, sir.

3 Q. All right. And how long have you served with the
4 Board of Education?

5 A. I was appointed in May of 2010, and then I -- they
6 had a special election to fill the seat that I was
7 appointed to and I ran unopposed and my term was
8 supposed to have been up in 2012.

9 Q. Okay.

10 MR. NESMITH: If may approach, Your Honor?

11 THE COURT: You may.

12 BY MR. NESMITH:

13 Q. All right, Ms. Crinson, I'm going to ask you to
14 take a look at what has been marked as Defendant's
15 Exhibit 5 and tell me if you recognize that?

16 A. Yes, sir. This is a copy of the submittal that
17 Mr. Jimmy Skipper was going to -- was sending in to the
18 justice department, or was going to send in to the
19 justice department. I'm not -- yeah, it's the
20 preclearance letter.

21 Q. Okay. And if you'll look on the second page.

22 A. Uh-huh.

23 Q. And right down here where it has date and
24 description, where it has November 11th, 2010, can you
25 please read that to the Court?

1 A. Yes, sir. On November 11th, 2010, a motion was
2 made by Mr. Goodnan, seconded by Ms. Fitzpatrick, to
3 pursue a resolution to reduce the board to seven
4 members. Motion carried unanimously.

5 Q. And right below that where it has --

6 A. 12 --

7 Q. December --

8 A. Okay.

9 Q. Yes, what's that date there?

10 A. December 9th, 2010, a motion was made by
11 Mr. Goodnan, seconded by Ms. Crinson to approve a
12 resolution to introduce local legislation providing for
13 a reduction in the number of board members. Motion
14 carried unanimously.

15 Q. Do you have a specific recollection of those two
16 votes?

17 A. Yes, I do.

18 Q. And did they actually occur?

19 A. Yes, sir.

20 Q. Now I hand you what has been marked as Defendant's
21 Exhibit 4 and ask you to take a look at that.

22 A. Uh-huh.

23 Q. Do you recognize what that is?

24 A. Yes, it's a report from Advance Ed, which everyone
25 sort of calls SACS because no one is familiar with the

1 Advance Ed terminology, and it's a monitoring visit
2 report from when they came in December 11th to 13th,
3 2012, to do kind of an investigative visit.

4 Q. Okay. And I'm going to show you what has been
5 marked as Defendant's Exhibit 3 and ask you if you
6 recognize that?

7 A. Yes. This is -- oh, I'm sorry, I was looking at
8 the date. This is another Advance Ed or SACS
9 monitoring review report when they came a year later in
10 December 15th through 17th, 2013.

11 Q. And I'm also going to show you what has been
12 marked Defendant's Exhibit 2 and ask you if you
13 recognize that?

14 A. Yes. This is a Advance Ed or SACS report of the
15 special review team for Sumter County Schools, when --
16 the review dates were April 9th through 11th, 2012. I
17 think that's when they responded to some allegations
18 that had been sent to them. Yeah.

19 Q. And what response did they give?

20 A. They came -- well, they went into a lot of detail
21 about the different, hmm, complaints that were made and
22 referenced them back to their different, what they call
23 indicators, it's kind of little rules that you agree to
24 when you sign up with SACS.

25 Q. To be accredited?

1 A. To be accredited, right, yes. That's sort of the
2 accreditation requirements, and then they put us -- as
3 to where they announced that they were putting us on
4 probation, and then they gave us some required actions
5 which we became very familiar with. There were five
6 required actions that we had to --

7 Q. What are those requirements?

8 A. The first one was -- do you want me to read the
9 whole thing or just summarize it?

10 Q. Just summarize it.

11 A. Summarize it. Okay. The first one was that the
12 board had to devise and implement a comprehensive plan
13 for unity, for unifying the board.

14 Q. Has that been done?

15 A. Yes, we -- pretty much.

16 Q. Okay. The second one?

17 A. The second one was that the superintendent and the
18 Board of Education had to devise and implement a
19 written plan for redistricting the board membership to
20 comply with applicable laws and approved board
21 policies.

22 Q. Has that happened?

23 A. Well, that's what we're sort of in the midst of
24 now. Yes, there has been a redistricting plan that was
25 passed by the legislature, and then I had to kind of

1 just redo it where you're supposed to have an election
2 to comply with it.

3 Q. If the district -- the board has been redistricted
4 and if there is an election, will you be in compliance
5 with that particular part of the SACS?

6 A. Yes, yes. Because when they're talking about
7 applicable laws, they were referring back to the Senate
8 Bill 154 and 4EX at the time.

9 Q. What's the next one?

10 A. The third required action was develop a written
11 plan for establishing a communications team and using
12 that team to communicate with what they call
13 stakeholders, which is the -- not only those faculty,
14 staff, but also the general public.

15 Q. Has that happened?

16 A. Yes, that's happened.

17 Q. And the last one?

18 A. No, the fourth one. There's two more. Yeah, the
19 fourth one is we have to immediately ensure that all
20 actions and decisions of the board are consistent with
21 approved policies and procedures and all applicable
22 laws, regulations, and standards.

23 Q. Do you know if you're in compliance with that?

24 A. If we follow the law on the election thing, yes,
25 yeah.

1 Q. Okay. And now the last one?

2 A. The fifth one was, we must implement -- or review
3 all board policies and -- to increase awareness and
4 understanding of the policies that govern our work.

5 Q. And have you done that?

6 A. Yes, we did do that. We actually had a consultant
7 come in and redo them, and then we had some training
8 sessions.

9 Q. And now I'm going to approach with what's been
10 marked as Defendant's Exhibit 1.

11 A. Yes.

12 Q. Do you recognize this?

13 A. Yes. It's a letter from the Advance Ed chief
14 accreditation officer, her name is Annette Bohling,
15 dated December 3rd, 2013.

16 Q. Okay. So that's just been a few months ago?

17 A. Yes. This actually came -- we saw it for the
18 first time the day that SACS was here in December, and
19 we were allowed to read it before we went in to meet
20 with SACS.

21 Q. Now, all of these documents, which are Exhibits 1
22 through 5, are these documents that you've kept in
23 ordinary course of your business as a board member for
24 the Board of Education?

25 A. Yes.

1 Q. And are they -- were these documents, were they
2 copied and made close in time to whenever these events
3 happened?

4 A. Yes, uh-huh. Yes, sir.

5 Q. Are they -- to best of your knowledge are they
6 exact copies of the originals?

7 A. Yes.

8 MR. NESMITH: At this time we tender Exhibits
9 1 through 5 to the Court.

10 THE COURT: All right. Mr. Wright, any
11 objection to the Exhibits 1 through 5 for the
12 defendant?

13 MR. WRIGHT: No, sir.

14 THE COURT: All right. They are each
15 admitted without objection.

16 THE WITNESS: Do you want me to say what the
17 letter said?

18 BY MR. NESMITH:

19 Q. Yes, that's my next question.

20 A. I'm sorry. Okay.

21 Q. I just wanted to move back, so I'd be back over
22 and it'd be easier for everybody to hear me?

23 A. Yeah, okay, okay. Uh-huh.

24 Q. Okay. So what is the import of the defendant's
25 Exhibit 1, which is the letter you were just

1 describing?

2 **A.** The accreditation officers is telling
3 Superintendent Smith that she's read an article in the
4 Times Recorder that reported that the board had voted
5 to go ahead with drawing a nine-member district map, in
6 spite of the recent federal court ruling requiring
7 compliance with Senate Bill 154 and Senate Bill 4EX.

8 **Q.** Okay. My question is, your understanding of this
9 with SACS, is that if the Board of Education does not
10 hold an election or violates those terms, is the
11 accreditation for the Sumter County Public School
12 System in jeopardy?

13 **A.** Yes. Because it says right here, failing to
14 comply with the required action could result in a
15 change in the district's accreditation status.

16 **Q.** Okay. Would the loss of accreditation of the
17 public schools be a devastating event?

18 **A.** It would be very -- I think it would be very
19 devastating. It would harm the students because you're
20 depending on getting Hope scholarships. You have to
21 come from an accredited school, and I think every
22 college requires a high school diploma from an
23 accredited high school. And I would think that any
24 industries looking to move to Americus or Sumter County
25 would be very concerned about their employees's

1 children not being able to go to an accredited school
2 system.

3 Q. But you have a local accreditation, don't you?

4 A. Well, after SACS put the system on probation,
5 Superintendent Smith pursued other avenues of getting a
6 different kind of accreditation, and he found something
7 called the Georgia Crediting Commission, or -- it's
8 called GAC, G-A-C, and they came and visited for a day
9 or two and we paid a fee, and we're accredited by GAC.

10 Q. All right. Now, does that allow a student in the
11 Sumter County schools to attend a college or university
12 outside of the state of Georgia, to your understanding?

13 A. It's -- I'm -- it's kind of vague because I know
14 when GAC first started it only covered schools in
15 Georgia, colleges in Georgia, and as late as 2008, I
16 found something on the Internet that said they were
17 working on trying to spread their reach.

18 Q. To your knowledge, have they spread their reach?

19 A. I think they had to some point, but I'm not sure
20 how far -- how far they've gotten. I can't find it
21 written anywhere. They don't have it anywhere on their
22 website how far they reach.

23 Q. So you don't know?

24 A. So I don't know, huh-uh.

25 Q. So basically, your understanding of this

1 accreditation system, if a child graduates from Sumter
2 County public schools, would that child be able to
3 attend, say, Harvard university?

4 A. I would be concerned about that. To me, if
5 they -- if they really were nationwide, it would say it
6 on their website.

7 Q. And could they -- what about, as far as you know,
8 would they have difficulty getting in, say, just,
9 University of Wisconsin, any place?

10 A. I would say -- I can say for sure that it would be
11 much better to have SACS accreditation to assure that.

12 Q. Doesn't SACS allow also to attend schools in
13 Europe?

14 A. SACS is worldwide.

15 Q. Okay. So to lose accreditation would be adverse
16 to the public interest, would that be a fair statement?

17 A. Yes, it would.

18 Q. Okay.

19 A. And can I volunteer something here?

20 Q. I --

21 THE COURT: The witness --

22 BY MR. NESMITH:

23 Q. Yeah, only if it has to do with what I'm saying,
24 if you're explaining the answer.

25 A. Well, I don't know. I just -- I know that the --

1 some members of the school board and the superintendent
2 have been told that you can't shop for accreditation to
3 get away from having to appear before the state board.

4 **Q.** Well, let me ask you a question, one last question
5 Ms. Crinson, what is your understanding of why the
6 school board attorney, Jimmy Skipper resigned?

7 **A.** He was asked to withdraw his -- withdraw and not
8 send anymore submittals into the Department of Justice
9 about pre-clearing the new five plus two districting.
10 And he said that that -- the law said that you shall
11 submit the plan to the Department of Justice, and he
12 felt that ethically he couldn't refuse to do what his
13 client asked to do and break the law at the same time.

14 **MR. NESMITH:** That's all I have, Your Honor.

15 **THE COURT:** All right. Cross examination,
16 Mr. Wright?

17 **CROSS EXAMINATION**

18 **BY MR. WRIGHT:**

19 **Q.** Ms. Crinson --

20 **A.** Yes.

21 **Q.** -- with the new accreditation, do you know of any
22 student in Sumter County that has been refused from
23 being admitted in any school?

24 **A.** It actually hasn't come up yet because they're --
25 it's a little early to be hearing back from colleges,

1 and this is the first year we've been in this
2 situation.

3 Q. Ms. Crinson, is the minutes that you referred
4 to --

5 A. Yes.

6 Q. -- are the minutes accurate, or are the minutes
7 summary of what's said?

8 A. Well, I would say they're an accurate summary of
9 what happened. It doesn't -- our minutes don't say
10 every word that was said, but if there is an action
11 taken or a motion taken, it says what the motion is,
12 and if it's unanimous, that means everyone there voted
13 for it. And at the top of the minutes it'll say who
14 was present. If it was not unanimous, it always says
15 so and so, so and so, and so and so for voted for, and
16 so and so, and so and so, and so and so voted against,
17 so.

18 Q. So, in other words, the minutes from you all's
19 boards are summaries?

20 A. Yes.

21 Q. Of what was said?

22 A. Yes, sir.

23 Q. So then what's actually here may not be totally
24 accurate to what was actually said?

25 A. Well, if it says a motion was made to approve a

1 resolution to introduce local legislation providing for
2 a reduction in the number of board members, that's what
3 the person said is their motion.

4 **Q.** With SACS, do they have judicial power to -- that
5 you read there -- to tell the board that they must
6 change to five or -- districts to -- in order to get
7 accreditation?

8 **MR. NESMITH:** Your Honor, I think that asks
9 her -- is asking her to state a legal conclusion, which
10 she is not qualified to do.

11 **THE COURT:** Well, I think he can ask her to
12 what knowledge she might have, if any. I won't accept
13 it as being a legal opinion, but any understanding she
14 might have.

15 **BY THE WITNESS:**

16 **A.** Okay. You're asking --

17 **BY MR. WRIGHT:**

18 **Q.** Well, what I'm asking you is, he had you to read
19 from a document --

20 **A.** Uh-huh.

21 **Q.** -- that said that if the board don't do this or
22 that, that the accreditation would be in jeopardy. Is
23 that correct?

24 **A.** Yes. Because there are certain, I call them
25 rules -- that's a simple word. Let me see what they're

1 called -- directives that are numbered that when you
2 are under SACS accreditation you're suppose to comply
3 with these different areas of, you know, governance,
4 and, you know, there's different categories, and one of
5 them is that you're supposed to follow all pertinent
6 laws and regulations and policies and things.

7 **Q.** Okay. And have you at any point on this
8 particular board not followed any laws?

9 **A.** I actually have tried very hard to follow all
10 laws, and if it's -- hmm -- if I feel something is
11 against the law, then I will bring it up and vote
12 against it or not participate.

13 **MR. WRIGHT:** One second, Your Honor. Your
14 Honor, I have no further questions for this witness.

15 **THE COURT:** All right. Any further questions
16 from the defense?

17 **MR. NESMITH:** No, Your Honor.

18 **THE COURT:** All right. You may step down.
19 Any objection to the witness being excused?

20 **MR. NESMITH:** I do not anticipate needing her
21 again, Your Honor.

22 **THE COURT:** All right, then, you may step
23 down and you may remain or leave if you wish.

24 **THE WITNESS:** Who do I do with this stuff?

25 **MR. NESMITH:** She's got the exhibits. Then

1 I'll call Mr. Brady, and I'll go get him right now,
2 Mr. Robert Brady.

3 **THE COURT:** All right.

4 **COURTROOM DEPUTY:** Do you solemnly swear or
5 affirm that the testimony you are about to give in the
6 case now before the Court will be the truth, the whole
7 truth, and nothing but the truth?

8 **THE WITNESS:** I do.

9 **THE COURT:** All right. You may be seated.

10 **THE WITNESS:** Okay.

11 **ROBERT BRADY**

12 **Witness, having first been duly sworn, testified on**

13 **DIRECT EXAMINATION**

14 **BY MR. NESMITH:**

15 **Q.** Mr. Brady, would you please introduce yourself to
16 the Court and state your full name for the record?

17 **A.** Yes. My name is Robert Brady, excuse me, I'm
18 Supervisor of Elections for Sumter County.

19 **Q.** Okay. And how long have been the Supervisor of
20 Elections for Sumter County?

21 **A.** A little over two years.

22 **Q.** Okay. Now, it's going to be a pretty obvious
23 question, but you're familiar with an election
24 that's -- that's to take place May 20th, 2014?

25 **A.** Yes, sir.

1 Q. And that election was called by your office?

2 A. Yes, sir.

3 Q. And that election was called pursuant to -- what
4 reason?

5 A. Our portion of that election was called based on
6 HB House Bill 154 and Senate Bill 4EX.

7 Q. Well, I'm talking about the second election, not
8 the first election.

9 A. The second election then was called based on House
10 Bill 836.

11 Q. Okay. And all of the calls of the election,
12 though, are provided for in Senate Bill 154 and 4EX; is
13 that correct?

14 A. Yes, sir, that is correct.

15 Q. All right. Now, did you ever receive any
16 correspondence or any kind of letters or copies of
17 letters from the attorney for the school board?

18 A. I'm not sure I understand.

19 Q. All right, well --

20 MR. NESMITH: May I approach, Your Honor, to
21 refresh his memory?

22 THE COURT: You may.

23 BY MR. NESMITH:

24 Q. Look at those and see if that refreshes your
25 memory.

1 A. Ah, yes. Yes, sir, I did.

2 Q. Okay. And those letters, would you agree in
3 essence tell you that it is your responsibility to call
4 the election for the school board?

5 A. Yes, sir. These -- I interpreted these to be
6 desire of this attorney that I call a school board
7 election.

8 Q. And he identifies himself as the school board
9 lawyer, correct?

10 A. Yes, he does. (*Clearing voice*). I apologize.

11 Q. Now, as a supervisor of elections do you have to
12 operate within a budget frame work?

13 A. Yes, sir, I do.

14 Q. And in operating with a budget frame work, do you
15 budget for elections?

16 A. Yes, sir, I do.

17 Q. And do you submit that budget to the Sumter County
18 Board of Commissioners?

19 A. Yes, sir, I do. It has to be submitted for
20 approval.

21 Q. And once the -- it's approved, it's your
22 responsibility to operate with inside your budget?

23 A. Yes, sir, as much as is possible.

24 Q. Okay. So let me ask you, if the election is
25 stayed by the Court by injunction and has to be held at

1 a different time, is this going to be a substantial
2 cost to the taxpayers of Sumter County?

3 A. Yes, sir, it is.

4 Q. Okay. What would you approximate would be the
5 cost of the taxpayers should this election have to be
6 held again?

7 A. Somewhere in the vicinity of 14 to \$15,000.

8 Q. Are you also familiar with what VAP means? The
9 voting age?

10 A. It's my understanding that stands for a voting age
11 person.

12 Q. Okay. Or population?

13 A. Ah, okay. Then, no, sir, I wasn't.

14 Q. All right. And are you familiar with the number
15 of active and inactive voters in Sumter County?

16 A. Yes, sir, I am.

17 Q. And does that number fluctuate as often as even
18 month to month?

19 A. Yes, sir, actually it does.

20 Q. Okay. And if I told you that in July of 2013 that
21 the active African American voters -- these are the
22 people that are registered to vote, not voting age
23 persons, but actually registered voters -- was 7,807,
24 does that number ring true to you?

25 A. Could I have just one second to confirm?

1 Q. Sure.

2 A. I'm sorry, what was that number again?

3 Q. 7,807.

4 A. 7,807, yes, sir.

5 Q. And active white voters would be 7,726?

6 A. Yes, sir.

7 Q. And so today that number has flipped, correct?

8 A. Yes, sir, that has changed, again, because of the
9 variation of the -- the variation of the population of
10 voters.

11 Q. And that is not unusual, correct?

12 A. No, sir, it is not.

13 Q. But who you -- would it be fair to say, without
14 getting into an absolute percentage, that the active
15 voters in Sumter County, black and white, stay
16 somewhere around 50/50?

17 A. Yes, sir, that would be an accurate statement.

18 Q. Give or take a little bit?

19 A. There's about a --

20 Q. From month to month?

21 A. About a four percent fluctuation either way.

22 Q. Four percent?

23 A. Approximately, yes, sir.

24 Q. You've been conducting early voting; is that
25 correct?

1 A. Yes, sir, I have.

2 Q. Did you set a goal for how many votes you wanted
3 to be cast in early voting?

4 A. Yes, sir.

5 Q. And what was that goal?

6 A. I had -- had hopes of acquiring 250 votes.

7 Q. How many votes have you gotten to date?

8 A. As of 10 o'clock this morning, we hit our 250
9 mark.

10 Q. And you expect more today?

11 A. Yes, sir, I do.

12 Q. So voting is progressing along in a proper
13 fashion?

14 A. It's moving smoothly and relatively efficient.

15 Q. Now, have you had any complaints about the way
16 that the districts are drawn or that there's any
17 problems with the election?

18 A. No, sir. I've not had any comments at all.

19 MR. NESMITH: That's all I have, Your Honor.

20 THE COURT: All right. Cross examination?

21 MR. NESMITH: I'm sorry?

22 THE COURT: Cross examination for Mr. Wright.

23 **CROSS EXAMINATION**

24 BY MR. WRIGHT:

25 Q. Mr. Brady, the current district lines that exist,

1 are they equally -- those 7,800 voters, are they
2 equally distributed through those districts?

3 A. Excuse me, sir, you're referring to the current
4 school board districts as they exist?

5 Q. No, sir. I'm referring to the question that
6 Mr. NeSmith asked you about, he said it was 7,807
7 active black voters and 7,726 active white voters.

8 A. Yes, sir.

9 Q. So my question is, are they equally distributed
10 among the five districts?

11 A. Yes, sir, of course.

12 Q. And why do you say they are equally distributed?

13 A. I would say that because great efforts were
14 expended in the redistricting process last taken place
15 were made to make the districts be as uniform, both
16 black and white as far as voters are concerned, as
17 possible is why I believe that to be the case.

18 Q. How many total voters are or what's the -- how
19 many total voters are in each district?

20 A. Give me a second while I confirm. I have that
21 information.

22 Q. Yes.

23 A. And you are concerned with the five county
24 commission districts is what you're asking me about; is
25 that correct?

1 Q. That's correct.

2 A. Okay. Okay, sir, ask me again, if you would
3 please. I want to make sure I'm answering what you're
4 asking.

5 Q. How many active voters are in each district?

6 A. In each district?

7 Q. Well, in the five districts, you've got five
8 districts.

9 A. Total. The total number of current active voters?

10 Q. Yes, sir.

11 A. Currently that would be 16,536. Oh, excuse me,
12 you said active voters, not total voters. The first
13 time it was total.

14 Q. Okay. Well, total?

15 A. Total voters is 16,536.

16 Q. All right. In district one how many of those
17 active voters in district one black and how many of
18 those are white?

19 A. Let me see. In district one African American
20 voters are 1857. 1-8-5-7. Caucasian voters are 1,023.

21 Q. District two?

22 A. African American is 1,001. Caucasian are 3,062.

23 Q. District three?

24 A. African American voters are 1,246. Caucasian
25 voters are 1,846.

1 Q. District four?

2 A. African American voters are 1,181, Caucasian
3 voters are 1200 -- or excuse me, 1,320.

4 Q. What was the last number?

5 A. 1320.

6 Q. District five?

7 A. African American voters are 1,885, Caucasian
8 voters are 772.

9 Q. Well, now, your earlier testimony was that it was
10 equally distributed. Now, based on the numbers you
11 just gave there, it doesn't look like they're equally
12 distributed. Would you not say that two of the
13 districts are the only two districts that blacks have
14 the actual number?

15 A. Again, sir, you're asking about apples and
16 oranges. You asked me about active voters. You didn't
17 ask me about total voters.

18 Q. Well -- okay. Well, on the numbers you just
19 gave --

20 A. Uh-huh.

21 Q. -- how many districts do black have the majority?

22 A. Again, sir, with active voters, there are two.

23 Q. Well, I'm just -- I'm just asking you for the
24 numbers you just gave.

25 A. Those were the numbers that I just gave you.

1 Q. And numbers you just gave, do blacks have the
2 majority in three districts, two districts, one
3 districts?

4 A. Of active voters it appears they have them in two.

5 Q. Okay. It appears? I mean, these numbers are not
6 accurate?

7 A. It appears that from moment to moment the number
8 of active to inactive voters changes.

9 Q. Okay. Let's look into the school board. In
10 district one, how many black voters is it?

11 THE COURT: For my information, when we say
12 district one, are we talking about --

13 MR. WRIGHT: About the nine districts now.

14 THE COURT: Is that the one where the
15 election is being held for Tuesday the 18th?

16 THE WITNESS: I'm sorry, sir?

17 THE COURT: Is that the 18th vote?

18 THE WITNESS: Yes, sir, for March 18th, we
19 will have voters for nine districts, yes, sir.

20 THE COURT: All right. I just wanted to be
21 sure which one was being asked about so for my notes.
22 All right. You may go ahead.

23 BY THE WITNESS:

24 A. Okay. Sir, and you're asking me for a breakdown
25 by school board district?

1 BY MR. WRIGHT:

2 Q. Yes, sir.

3 A. Okay. In district one, there are 738 white
4 voters, 883 African American voters. There are 312
5 African American in district 2, 1305 Caucasian voters.
6 In district three, there are 799 African American
7 voters and 641 Caucasian voters. In district four,
8 there are 894 African American voters, 425 Caucasian
9 voters. In district five, there are 280 African
10 American voters and 1492, that's 1,492, Caucasian
11 voters. In district six, there are 553 African
12 American voters and 1504 Caucasian voters. In district
13 seven, there are 783 African American voters and 951
14 Caucasian voters. In district eight, there are 1,249
15 African American voters and 119 Caucasian voters. In
16 district nine, there are 1,562 African American voters
17 and 78 Caucasian voters. Which --

18 Q. Go ahead, sir.

19 A. Which, incidentally, works out to be African
20 American voters to be 42 percent of the voters and
21 Caucasian to be 41.6 percent of the voters, total.

22 Q. When you look at those numbers, which one of the
23 two sets of numbers you gave out gives equal
24 representations to all people?

25 THE COURT: Wait, what kind of question is

1 that?

2 **MR. WRIGHT:** Well, it is -- and the question
3 is, the fourth set of numbers, the numbers that he gave
4 have two districts that is predominantly black African
5 Americans and three districts that is predominantly
6 white, and what he just gave for the nine districts
7 seats, he has --

8 **THE COURT:** You didn't ask them what those
9 were.

10 **MR. WRIGHT:** Okay. So anyway, I withdraw
11 that question.

12 **BY MR. WRIGHT:**

13 **Q.** There was a question about money and what it would
14 cost, but which is more important, the cost or justice?

15 **MR. NESMITH:** I object to that question, Your
16 Honor.

17 **THE COURT:** Go ahead and answer it if you
18 can.

19 **MR. NESMITH:** Okay.

20 **THE WITNESS:** Do you want me to answer that?

21 **THE COURT:** His opinion, actually.

22 **MR. WRIGHT:** Right.

23 **THE COURT:** Well, I mean, do you have an
24 opinion?

25 **BY THE WITNESS:**

1 **A.** Yes, sir, I do actually. You're discussing apples
2 and oranges. Justice is an intangible that has no
3 price, but at the same time there is a physical cost
4 that's associated with every action that we take by a
5 government. That government is funded by the people.
6 So there is where you have to decide which is it. Is
7 it the people paying for whatever they perceive to be
8 justice, or are you looking at justice in a
9 philosophical fashion? That's not an answerable
10 question, sir.

11 **MR. WRIGHT:** No further questions.

12 **THE COURT:** All right. Any redirect?

13 **MR. NESMITH:** No, Your Honor.

14 **THE COURT:** All right. Any objection to this
15 witness being excused?

16 **MR. NESMITH:** No, sir.

17 **THE COURT:** All right. You may remain or
18 leave, however wish. All right. Is there another
19 witness for defendant?

20 **MR. NESMITH:** I'm sorry. We rest.

21 **THE COURT:** All right. Do you have any
22 rebuttal evidence you wish to present, Mr. Wright?

23 **MR. WRIGHT:** Your Honor --

24 **THE COURT:** Yes, sir.

25 **MR. WRIGHT:** -- simply, the issue before you,

1 this court --

2 **THE COURT:** Before you argue, what I'm saying
3 is --

4 **MR. WRIGHT:** No, I don't have any that I want
5 to leave with you.

6 **THE COURT:** All right. That's fine. All
7 right. You may make your argument, and I'll allow
8 Mr. NeSmith to argue, and then you may make a brief
9 reply.

10 **MR. WRIGHT:** All right.

11 **THE COURT:** Yes, sir.

12 **MR. WRIGHT:** -- is whether or not the new
13 proposed plan violates Section 2 of the Voting Rights
14 Act of 1965. As we just went through the numbers, and
15 the numbers speak clearly and loud and ringing for
16 themselves, if the new plan goes into effect, it will
17 certainly pack the majority votes into two districts.
18 The numbers was just read before this Court, and
19 there's no disputing that issue.

20 The numbers came from an accurate report of the
21 data that he brought today that he says is accurate.
22 He went through the nine district seating, which we are
23 saying is the -- is what we need in Sumter County,
24 Georgia in order to be assured that every person have
25 the opportunity to vote for the candidate of their

1 choice, and that their vote has -- and that the new
2 plan will simply just dilute and split and crack the
3 black up, even though we may have a slight majority in
4 the overall number. But that overall number is diluted
5 so badly so you could never get in to ever gain a 3/2
6 majority with that current set up. And so, as speaks
7 to at-large, it has been challenged with Mr. Edge that
8 we talked about earlier in 1974, and that it just
9 simply goes away from what Section 2 was put in place
10 to prevent.

11 So even in -- they keep saying about your order.
12 Your order plainly said that the issue of
13 discrimination, that the issue about whether or not it
14 violated Section 2 was not before you, and you could
15 not rule on it. Well, that is what's before you today
16 is whether or not the new plan will cause -- will cause
17 a hurt to the community that cannot be reversed.

18 **THE COURT:** Let me ask you this, Mr. Wright.
19 Now, of course, you obviously have some knowledge of
20 title two. Did you understand the level of proof in
21 title two is -- in Section 2, rather, of the voters
22 right act is pretty strict, it's a pretty high hurdle.
23 You are not suggesting to the Court just because there
24 is not an exact number of balance between the races
25 that that necessarily means that there's a violation of

1 the voters right act?

2 **MR. WRIGHT:** No. What I'm saying is that the
3 majority group is significantly large and
4 geographically concentrated to make up a majority in a
5 single member district, that they have concentrated --

6 **THE COURT:** Say that again. I got lost. It
7 sounded thoughtful but I got lost on it.

8 **MR. WRIGHT:** They have taken the area of
9 black people with the new plan and put them into a one
10 geographically or two geographically locations, which
11 is part of what you have to show the Court is -- or
12 that did take place. And that whether or not there is
13 a political cohesiveness. It has been testified to
14 today that in Sumter County, Georgia black people vote
15 one way, and white people vote one way.

16 **THE COURT:** That's been the opinion given by
17 certain people --

18 **MR. WRIGHT:** I know, but --

19 **THE COURT:** -- but I don't have any
20 statistical evidence before me that that's the case.

21 **MR. WRIGHT:** Yes, sir.

22 **THE COURT:** I don't discredit the opinions of
23 people's views, but just like I don't think anybody
24 would have guessed that the numbers today are
25 approximately equal in Sumter County, Georgia. I think

1 most people would have been surprised by that number.

2 But, again, what I'm getting at, the difference
3 between actual and empirical evidence supporting an
4 opinion, the Court is not going to allow that empirical
5 evidence thus far in this case. We're just at the
6 beginning. The case is -- the Court won't be deciding
7 whether there is a violation of the voters right act
8 today. This is going to the question as to whether or
9 not there should be an injunction against the election
10 while this case is pending.

11 **MR. WRIGHT:** Right, and that's what we
12 believe should happen is that an injunction should be
13 to prevent the May 20th election.

14 **THE COURT:** Okay. Is there anything on the
15 merits, and I know, again, just like I just said,
16 you're not here to prove your case fully today. I
17 note, just looking at the numbers for the districts for
18 commissioner purposes, you agree that those have been
19 approved --

20 **MR. WRIGHT:** Yes, sir.

21 **THE COURT:** -- as proper districts?

22 **MR. WRIGHT:** Uh-huh.

23 **THE COURT:** And based on the numbers that
24 were given just a few moments ago it would appear that
25 one -- that two of those districts would be majority

1 black and -- on the numbers, and the other three would
2 be Caucasian, but of those other three, one of them
3 have about -- let's see, there is -- the difference is
4 only about 140 voters, roughly. So you've got -- so
5 you say you really have -- you could argue that there
6 are two and two with one that could easily swing one
7 way or the other.

8 **MR. WRIGHT:** Uh-huh.

9 **THE COURT:** It could be sometimes three and
10 sometimes two. And my question is really this.
11 Assuming that that is a fair distribution based on the
12 voting distribution in Sumter County, why would that
13 not be proper under -- for the Board of Education? Why
14 would that something to be unfair?

15 **MR. WRIGHT:** And in the document that's
16 before the Court that we brought we raised that very
17 issue, is that -- is that it probably should have been
18 challenged before now, that it is in violation, and
19 that it had been something -- and I don't know why it
20 hadn't been challenged before now, and it just hadn't
21 been challenged before now.

22 **THE COURT:** It could be argued that it's not
23 challenged because didn't anyone think they could do it
24 successfully.

25 **MR. WRIGHT:** I know, but at the same time

1 once we looked at it and then we looked at the impact
2 of the change and the makeup of the school board, then
3 that's when it became more clear and apparent that
4 sometimes you see some things and you don't necessarily
5 see them at that time, but once that became apparent,
6 then you looked that you had nine members and then what
7 would happen with that makeup of that nine member
8 board, and then you started to really look at the
9 numbers, and then you realized that that should have
10 also been challenged under Section 2.

11 **THE COURT:** But we have to say, though, at
12 some point, though, in the past those -- that five
13 member board was approved after a census, wouldn't it?

14 **MR. WRIGHT:** Yes, sir. It was approved by
15 someone, and, again, not to let's say, beat up
16 Mr. Skipper and he's not here, but I believe that --
17 and this is just my own opinion, again -- that if they
18 had not asked him to show them what he was going to
19 submit prior to the submission and his other
20 submissions were not accurate, that even you, if I
21 present you some documents that says I have a 6/3
22 board, why are you objecting to it when six blacks will
23 say they want this change. So I don't know if that's
24 what happened in the past, and in 2000 I don't even
25 know if Attorney NeSmith could answer that because he

1 wasn't their attorney then. I don't believe he was.
2 I'm not sure who the county attorney was in 2000. So I
3 don't know how that plan was submitted.

4 **THE COURT:** But it would have had to go
5 through DOJ review at the, unlike the new --

6 **MR. WRIGHT:** Right, I'll agree with that.
7 So, you know --

8 **THE COURT:** Is there any reason to suggest
9 they would not have been just as careful with their
10 review then as they would apparently as it's being
11 suggested about 2012?

12 **MR. WRIGHT:** No, I'm not suggesting that they
13 would not. But what I am suggesting is is that
14 whatever you send back and whatever answers you give
15 them would affect the decision that they make.

16 **THE COURT:** All right. I didn't have to
17 reach that question. Really, there's no basis for me
18 to reach that question, and I didn't in the prior
19 litigation, but a question I did have and it was not
20 asked of either the witnesses and that wasn't
21 necessary. And that is along this line -- yeah, there
22 was somewhat of an explanation of it. But it appears
23 that the recommendation was withdrawn, the request for
24 review was withdrawn by the board --

25 **MR. WRIGHT:** Uh-huh.

1 **THE COURT:** -- while it was under review by
2 the Department of Justice without them giving any
3 ultimate opinion about whether they thought it was a
4 good or bad and --

5 **MR. WRIGHT:** Well, again --

6 **THE COURT:** And the question I would have is
7 if what they think is so important would have made
8 sense for them to complete the process and exactly say
9 whether they thought it passed muster or not.

10 **MR. WRIGHT:** Well, I can't speak to what
11 their attorney recommendations at that point when
12 Mr. Skipper resigned. I know that they hired new
13 counsel, but I can't really speak it to it because I
14 wasn't involved in their executive sessions and exactly
15 why they decided to make that withdrawal, you know, one
16 of them would have to be more inclined to answer that,
17 but I do agree that if it had stayed with them we
18 probably wouldn't even be here today because I believe
19 because of the three letters that I have seen since
20 that time that they would have rejected the plan
21 because they were not satisfied with what had been
22 presented to them.

23 **THE COURT:** Well, I don't think they ever
24 said they were dissatisfied. They were just asking
25 some questions, weren't they?

1 **MR. WRIGHT:** Well, from the language of my
2 interpretation of the letter, it was clear that they
3 was dissatisfied. That was my interpretation.

4 **THE COURT:** I mean, that's your
5 interpretation and I'm not saying that's a bad
6 interpretation. I'm saying it wasn't none of them
7 saying, we are dissatisfied with this proposal, and we
8 have these questions. It says, we have these questions
9 about these proposals.

10 **MR. WRIGHT:** Right.

11 **THE COURT:** Is the latter more accurate?

12 **MR. WRIGHT:** Right, the latter is more
13 accurate to the language that they used.

14 **THE COURT:** And it could very well have meant
15 that they were dissatisfied.

16 **MR. WRIGHT:** Right.

17 **THE COURT:** But they never used the
18 terminology.

19 **MR. WRIGHT:** And which is the same thing
20 about the letters earlier that he had Mr. Brady testify
21 to because my interpretation of those two letters were
22 different from his, is that, what I interpreted, it
23 wasn't telling him that he was to actually hold -- it
24 didn't spell out -- it didn't make it clear, like what
25 you're saying now.

1 **THE COURT:** I understand. Let me ask this
2 question. Of course, one of the things you have to
3 show here is that there's a likelihood of success on
4 the merits. Another thing that you have to show is
5 that there is some irreparable injury that would occur
6 by allowing the May election to go forward, and that
7 there is no other way to fix this if the vote goes
8 forward. And it further is in the best interest of the
9 public that it be allowed, and that it's not more
10 harmful to the other party than it would be by not
11 doing so. So do you want to tell me about how your
12 case meets the standards for granting of injunctive
13 relief preliminarily as you are requesting?

14 **MR. WRIGHT:** Well, Your Honor, it meets the
15 standard because if the proposed change goes through
16 and the election takes place on May 20th, the minority
17 black people in Americus and Sumter County, Georgia
18 would be just taken back to 1965 at the time when the
19 Voting Rights Act was put in that --

20 **THE COURT:** What I'm asking you -- I
21 understand what you're saying. Obviously if what you
22 say is true, they would be harmed at some stage. But
23 what I'm asking about is why the Court needs to take
24 the extraordinary action of stopping an election now
25 because isn't it correct that if the Court heard this

1 case and ultimately agreed with you, it could revoke
2 any election that had taken place beforehand and cause
3 a corrected districting to be made. In other words,
4 your case doesn't end with today if I deny injunctive
5 relief.

6 **MR. WRIGHT:** Uh-huh.

7 **THE COURT:** In other words, injunctive relief
8 is pretty much saying that this is of such -- the
9 impact is so great that the only way to preserve what
10 should be a -- almost a clear way in the end --

11 **MR. WRIGHT:** Uh-huh.

12 **THE COURT:** -- is by stopping this now. But
13 isn't it true that this could be corrected later if it
14 turned out that you've established your case?

15 **MR. WRIGHT:** Well, I don't believe it could
16 be corrected later.

17 **THE COURT:** Why not?

18 **MR. WRIGHT:** Because once it occurs, then it
19 has already happened, and that, you know, I don't want
20 it to be the old additive that if an egg broke, don't
21 fix it.

22 **THE COURT:** That's not what I'm saying.

23 **MR. WRIGHT:** But, I mean, what I'm saying is,
24 is that if it goes through, it can't help but hurt
25 because, I mean, you're fixing to take six voting in

1 black board members and basically undo them and then
2 they will, out of their seats, the people with whom
3 they were representing no longer have the ability to
4 really vote on the candidate of their choice.

5 **THE COURT:** Well, this Court's order last
6 year kept -- maybe the year before last time now --
7 kept four people who had been voted on in March, it
8 stopped the vote all together, it froze everything.

9 **MR. WRIGHT:** I didn't -- say that again.

10 **THE COURT:** The Court's order froze
11 everything the last time.

12 **MR. WRIGHT:** Uh-huh.

13 **THE COURT:** And out of that and through some
14 other matters that happened, this matter comes back up
15 for voting again.

16 **MR. WRIGHT:** Correct.

17 **THE COURT:** And so what I'm trying to
18 understand is why could not an action by the Court in
19 the future correct anything that may prove to be wrong.

20 **MR. WRIGHT:** Well, I guess you could do it in
21 the future, but we would hope that the Court would
22 indulge in fixing it, you know, or helping us fix it at
23 this point in time.

24 **THE COURT:** I have another question for you
25 too, and I'm not trying to keep you from making your

1 argument, but I think I understand your argument, but I
2 want to make sure you have an opportunity to answer the
3 questions that I have.

4 **MR. WRIGHT:** Yes, sir.

5 **THE COURT:** This situation has been known for
6 some period of time because it was first raised as a
7 one man, one person, one vote issue that even with the
8 nine that they were disproportionate, which this Court
9 found, and stayed the election for that reason. And
10 the Court was taking action to redistrict --

11 **MR. WRIGHT:** True.

12 **THE COURT:** -- with nine in a way that would
13 have been appropriate and not be disproportionate, and,
14 of course, the law changed through the Supreme Court's
15 ruling and that became unnecessary. And so when the
16 Court asked for further briefing, I think late last
17 year, I think it was, and got the responses and the
18 Court issued its final order. So it's pretty clear
19 from that time forward that the -- at some point in
20 time there was going to be new elections based on the
21 5/2 and because of the issue with the soldiers having
22 the opportunity to vote in runoffs, the legislature had
23 to push the votes back into early, rather than later
24 and get this -- this was filed late last week within
25 two weeks of the time that this election was to occur.

1 The first one is kind of off the table now.

2 MR. WRIGHT: Yes, sir.

3 THE COURT: But the one in May is not very
4 far out. It's maybe about a month and half out from
5 now, and one of the factors the Court can take into
6 account in whether or not to grant injunctive relief is
7 the timeliness of the issue being raised in nearness to
8 the election.

9 MR. WRIGHT: Yes, sir.

10 THE COURT: So what is the reason this is
11 filed so close to the anticipated election?

12 MR. WRIGHT: Just frank -- Mr. McDonald
13 basically lied. He said he was going to do it. We
14 kept waiting for him to do it, it never happened.

15 THE COURT: Well, I appreciate your frankness
16 with the Court.

17 MR. WRIGHT: And so at that point -- I have
18 the letter in the correspondence if you want me to --

19 THE COURT: No, I take your word for it.

20 MR. WRIGHT: -- when we discussed it
21 immediately after you made your order, in the
22 discussion that we had, he said he was going move
23 forward on it, and we kept waiting, and we kept
24 waiting.

25 THE COURT: You're telling me you expected --

1 **MR. WRIGHT:** Right, because we -- and then it
2 got dragged on and it was like, well, I'm working on
3 it, we're getting it done, until it got down to the
4 wire to where, if we don't move now, then it's just
5 going to go, and then nothing happened.

6 **THE COURT:** Okay. I understand. Again, I
7 appreciate you being straightforward with the Court in
8 response to the Court's question. Also, you've heard
9 it mention that it would be some cost to the county to
10 reorder these at this time.

11 **MR. WRIGHT:** Sir?

12 **THE COURT:** To reorder the --

13 **MR. WRIGHT:** Oh, yes, sir. Well, I mean,
14 definitely it's cost for the county. I mean, this
15 is -- I mean, not only the cost, it's cost to me
16 because I'm in that county. I mean, it's a cost today
17 to the county. So it is a cost involved in it, but,
18 again, in the order of justice -- I mean, justice, like
19 it says, should have no price, should have no cost.

20 **THE COURT:** I thought it was a pretty good
21 answer myself. I don't think anybody really disagreed
22 with that.

23 **MR. WRIGHT:** Okay.

24 **THE COURT:** Well, what about the 250 people
25 or plus who have already voted?

1 **MR. WRIGHT:** Well, again --

2 **THE COURT:** In a way the Court would be
3 saying your vote is null and void.

4 **MR. WRIGHT:** Well, again, as when I was on
5 the witness stand and as we discussed then, that the
6 March 18th configuration, if the Court indulged, we
7 don't have an argument about the nine because it is
8 nine seats. So we say, you know, if that's your
9 ruling, it is no objection on our part. The actual
10 plan that we are arguing is the plan of May 20th.

11 **THE COURT:** Anything else you want to tell
12 me? I know I interrupted you several times, so.

13 **MR. WRIGHT:** No, you did a good job of
14 telling you the rest of what I had to tell you.

15 **THE COURT:** That was the idea, for you to get
16 to -- to tell me what I needed to hear.

17 **MR. WRIGHT:** Thank you.

18 **THE COURT:** All right. Mr. NeSmith?

19 **MR. NESMITH:** All right. Your Honor, I'm
20 going to try and be just as brief as I can. I know
21 it's late in the day.

22 As the Court previously spoke, and I'm quoting
23 from United States of America versus Alabama, which is
24 691 F.3d 269 at page 289 -- 281, pardon me, a 2012
25 decision where it says: A preliminary injunction may

1 be granted to a moving party who establishes, number
2 one, a substantial likelihood of success on the merits;
3 number two, irreparable injury to be suffered unless an
4 injunction issues; three, threatened injury and the
5 movant outweighs whatever damage the proposed
6 injunction may cause the opposing party; and if issued,
7 the injunction will not be adverse to public interest.

8 Now, this decision came after, I believe after
9 Winters, which was a 2008 decision. Winter. I said
10 Winters. Winter versus National Resource Defense
11 Council, which is 555 U.S. 7. It's a 2008 decision
12 reversing the Ninth Circuit where the Supreme Court
13 said: Issuing a preliminary injunction based only on
14 the possibility of irreparable harm is inconsistent
15 with our characterization of injunctive relief as an
16 extraordinary remedy that may only be awarded upon a
17 clear showing that the plaintiff is entitled to the
18 relief.

19 So, as the Court I think very appropriately
20 stated, it is a high burden to invoke the equitable
21 powers of this court to stop something, especially
22 something as precious to the United States of America's
23 rights of voting.

24 What we would say in response to those four
25 traditional tests for determining whether to grant a

1 preliminary junction, the substantial likelihood of
2 success on the merits which, of course, we don't
3 believe exists at this point because we do have -- we
4 are talking about a district that mirrors a
5 pre-approved district, approved by the United States
6 Department of Justice after strict scrutiny by them. I
7 don't mean court scrutiny. But their way of looking at
8 things, which the Department of Justice generally does
9 not leave too many stones unturned, and what we're
10 talking about more than anything else I think may be
11 the two at-large districts which do operate throughout
12 the state of Georgia, and we're standing in one right
13 now. The school board here has at-large seats to my
14 understanding, Dougherty County.

15 So to me the likelihood of success is not
16 substantial. There may be a likelihood. Maybe once
17 there's a regrouping or maybe arguments are honed and
18 perfected, that will change, but today, as we stand
19 here today, I believe there is no substantial
20 likelihood of success on the merits.

21 Number two, the irreparable injury will be
22 suffered unless the injunction issues. Well, first, we
23 just don't know that. Once this -- once the May
24 election comes, what if the two candidates -- and let
25 me tell you this, we've got two people running for the

1 four-year seat. They had to be staggered by law. One
2 is African American, one is white. And then on the
3 two-year, we've got four people, two are white and two
4 are African American. What if we come back here after
5 May and we have two at-large black members. Doesn't
6 that somehow negate this argument. Or what if we have
7 one white and one black. We don't know what's going to
8 happen. I think that this is too much of a crystal
9 ball to try and decide what irreparable injury would be
10 suffered. We just simply don't know that. I mean,
11 what we got to have here is a situation that's very
12 similar to this county and several others that have
13 at-large elections as has been -- and I know you didn't
14 have empirical data, but I think the Court can
15 certainly take notice that Sanford Bishop is still a
16 U.S. Congressman, that President Obama is still the
17 president of the United States, and while Mike Cheokas
18 still sits on the General Assembly and was author of
19 this bill that's being argued -- or being complained
20 about, House Bill 836, everyone -- it was undisputed
21 that he was defeated in Sumter County, you know, by a
22 black candidate which is an at-large.

23 Now, if -- he doesn't have the entire county. I
24 don't know what percentage he has, but it's not
25 impossible is what I'm telling you for someone to run.

1 If you look at the people that have run, you know, it
2 will be clear that obviously it can't be purely African
3 American votes because as you heard statistically
4 there's just not enough, the percentages are just too
5 close. So, obviously there's got to be -- one has got
6 to swing to the other.

7 The threatened injury to the movant outweighs
8 whatever damage the proposed injunction may cause the
9 opposing party. Well, you've already heard, it's going
10 to cost the taxpayers, and we're in a -- you know,
11 Sumter County is not a wealthy county. Sumter County
12 had to do furloughs. It's just -- first year coming
13 out of furlough, and it's workers, and, I mean, quite
14 frankly, you know, Sumter County has been carried on
15 the back of the taxpayer and on the back of their own
16 employees, and the \$15,000 is certainly not, it's not
17 the most money in the world, but it still something the
18 county doesn't have and the taxpayers are going to have
19 to pay that, and whatever money is paid, whether it's a
20 dollar or 1500 or 15,000 or 15 million, it's got to
21 come from somewhere.

22 But more importantly is the possibility of the
23 loss of SACS accreditation. Those children deserve --
24 I mean, they deserve to be in an accredited high
25 school. And they don't deserve to have that pulled

1 away from them and not be able to go to the college or
2 university of their choice.

3 One of the things that was mentioned was about, if
4 you're not accredited that you don't qualify for Hope
5 scholarship. Well, the Hope scholarship affects
6 children from all over. I mean, hopefully, it's going
7 to affect mine if she'll keep her grades up, but if it
8 doesn't, it affects children who work hard enough and
9 whether they're rich or whether they're poor and Hope
10 gives people just that, hope. And without
11 accreditation, the hope disappears from Sumter County,
12 and if it disappears, we've got children that aren't
13 going to college. If we have children that aren't
14 going to college, think of the irreparable harm,
15 irreparable harm. Those children can't have a do over.
16 They can't say I'm going to go back to the eighth grade
17 and start over or the seventh grade, or, you know, they
18 can't do that. They're stuck. Whatever it is is
19 whatever it is. They lose accreditation. Even if
20 accreditation is brought back the next year, those
21 children that graduate without accreditation there's
22 nothing that I can think of this Court can even do
23 about that. Once it's gone, it's gone.

24 Now, can the Court come back and correct any
25 Section 2 problems later on, certainly. There's no

1 problem with the Court coming back if the evidence
2 warrants that there is a problem with the way these
3 districts are drawn or if there is some sort of racial
4 imbalance or there's been any packing, cracking, or all
5 the things that are the *Gingles*' criteria, then it
6 would be, not only possible for this court to do it,
7 it's something this court would do. This court would
8 step in, it would correct it, and we would have to have
9 different elections, and that's just what we have to
10 do, and we would do what the Court orders us to do.

11 That's what Sumter County Board of Elections is
12 trying to do now, is to follow, not only the order of
13 this court, but also the law of the state of Georgia
14 signed into law by Governor Nathan Deal twice.

15 Now, would it be adverse to the public interest.
16 I can't imagine that it will be -- anything could be
17 positive to the public interest of causing taxpayer
18 burdens and children to lose accreditation. I don't
19 see how the public interest could even possibly be
20 served. I don't think the public interest is
21 necessarily being served today, but nevertheless, you
22 know, it was said that, yes, this is costing money
23 today, but the county is not here voluntarily. They
24 county is here because the county got sued. And so we
25 understand that that's going to happen and that's part

1 of government, but the public interest, what the people
2 want, are elections, and that's all they want. They
3 just want elections, and if the Court finds out later
4 on they're not appropriate, then, you know, by all
5 means, Judge, reverse them and start over again, and
6 we'll do exactly what you tell us to do.

7 I think if the Court remembers when we were
8 talking about the Byrd decision and you were asking
9 everybody what their position was, I came right up here
10 and I stood there and I told you that, Your Honor, we
11 don't care if it's five plus two, 9 or 90 districts.
12 We don't care what it is as long as you tell us they're
13 fair and square, or the Department of Justice, at that
14 time they could, approves those, and all we want to do
15 is proceed with a fair election which is according to
16 the law, and if there is anything that is wrong with
17 those districts, then now is not the time to be
18 stopping all those folks, all the people who have taken
19 the time and the effort to get out, and there are signs
20 all over the county, there are people actively
21 politicking for these positions, and to stop all of
22 that would be quite a slap to some of these candidates.

23 Now, the Thornburg versus Gingles. I say it's
24 *Gingles*. It's *Gingles* or *Gingles*. I don't know
25 whether it's a hard G or a soft G. But in Thornberg

1 versus Gingles, which, let's see, I believe that 478
2 U.S. 30, it's a 1986 decision. And in that decision
3 the United States Supreme Court was saying to prove a
4 Section 2 violation that what you got to do is you got
5 to prove very much -- this was what you were saying and
6 it sounded pretty thoughtful.

7 What he was reading is purely what comes from the
8 *Gingles*'s decision. It says: First, the minority
9 group must be able to demonstrate that -- a
10 sufficiently large geographic impact to constitute a
11 majority in a single member district.

12 What that means is if you are at a county like
13 Fayette County -- Fayette County was -- had five
14 commission districts, and they were all at-large, all
15 five of them. Their demographics were 80 percent white
16 and 20 percent African American and other. There was
17 really no way, at an at-large, if people vote down
18 racial lines, that the black people in Fayette County
19 had any voice, and the courts stopped that, and they
20 said, under the *Gingles*'s decision, if you got -- if
21 can you find an area, if you can draw lines and if you
22 can find an area and create single member districts and
23 in those single member districts you can create
24 districts where the minority in your county can vote
25 for the candidate of their choice, then you've got an

1 obligation to do that. And that's what Fayette County
2 had to do. We've got another county not too far north
3 of us in that same position which is probably going to
4 have to make a decision like this as well.

5 And it says that you have to show the minority
6 group is politically cohesive, and that's a difficult
7 one to do because it's hard to know how a person votes.
8 But what the court said is you've got to show that
9 minority group tends to vote for people of their own
10 race.

11 We have been talking about a lot of voting down
12 racial lines, and I think I said this also in the Byrd
13 case, is that I really -- I don't like the way that
14 sounds. It almost sounds like it's very racist on
15 either side, but what it boils down to is we vote for
16 who we know. We hang with people we know, we are
17 friends with people that we know. If the
18 communities -- people live where they live. And
19 there's something that we can't really do about that.
20 That doesn't mean that the government can say, you
21 know, we've got to relocate you people over here or
22 these people to this place. People live where they
23 live, and they get to choose to live where they live,
24 and we're not allowed to gerrymander districts to make
25 them where they would have numbers that some people may

1 want.

2 So what you have to show, just under the *Gingles*'s
3 decision, is that if you've got a single member
4 district -- these are single member districts. So that
5 part of the *Gingles* doesn't apply.

6 The second part, the minority group must show it's
7 politically cohesive. I mean, you know, I suppose
8 that's probably true, but I can show you instances
9 where obviously white citizens of Sumter County had to
10 vote for black candidates, the president of United
11 States, others.

12 The third, it says, the minority must be able to
13 demonstrate that the white majority vote sufficiently
14 block to enable it. And there got to be some special
15 circumstances of the minority candidate running
16 unopposed and usually defeat the minority's preferred
17 candidate. There's no evidence to the Court whatsoever
18 on that third prong that there's been any white
19 majority block voting.

20 Basically what we have is we have two districts,
21 one for the Board of Elections, one for the Board of
22 Commissioners. They mirror each other. One went
23 through the Department of Justice. It went through
24 with scrutiny, it came out without any problems, and
25 was approved, and has been operating successfully since

1 that time. And two of the districts have been occupied
2 by African American candidates for quite some time and
3 continue to be that way.

4 There was another decision in Bartlett versus
5 Strickland and the Supreme Court ruled on the first
6 prong of the *Gingles*'s test. In *Bartlett*, it said,
7 it's been argued that Section 2 requires drawing
8 district lines in such a manner to allow minority
9 voters to join with other voters to elect a minority's
10 group preferred candidate even when the minority group
11 comprises less than 50 percent of the voting age
12 population.

13 But rejecting that argument, the court said, that
14 Section 2 does not grant special protection to minority
15 groups that need to form a political coalition to elect
16 candidates of their choice. And this is the Supreme
17 Court saying this, it's not me saying this. It's the
18 Supreme Court saying this.

19 And what the third prong of the *Gingles*'s test
20 requires, that minority be able to demonstrate that the
21 majority vote sufficiently has to block, in a block to
22 enable it to defeat minority preferred candidates.
23 There's just no -- there's just nothing before this
24 court at all dealing with that.

25 So I don't want to go too far into the merits of

1 the case. I think that's for something later on. But
2 I do want to bring this out because of the first prong
3 about the substantial likelihood on the merits. As it
4 stands today the substantial likelihood on the merits
5 doesn't exist. Now, it might exist after May, but
6 today before the Court the substantial likelihood of
7 being successful on the merits, it just isn't there.

8 And I believe that the argument has failed on all
9 four points that our Eleventh Circuit has said this is
10 the way that we have to do it. And -- as the Court
11 pointed out. I appreciate your time, Your Honor, and
12 that's all that I have.

13 **THE COURT:** All right. Mr. Wright, as I
14 said, you have an opportunity to make any brief reply
15 you wish to make.

16 **MR. WRIGHT:** Your Honor, there is evidence in
17 2006 in Sumter County, Georgia that on the merits we
18 could meet that standard. And so certainly that would
19 be up to the Court to decide, but there was an election
20 took place in Sumter County in 2006 that involved
21 Wright versus Howard. So we believe that that
22 particular election and that we would be able to
23 present the Court evidence that -- that we could meet
24 and carry that burden.

25 Accreditation, certainly they say SACS, but the

1 Sumter County School System is accredited by another
2 organization, and in our research we have not found
3 where any student have ever been rejected at any of the
4 schools, and they are also into national, according to
5 the information that we interviewed and that we
6 researched and find.

7 The issue of money coming up, but the issue about
8 money should be really, as the Court would call it, a
9 moot, if that's what you call it, that it should be
10 about whether or not the black community would actually
11 be packed into two districts and never have an
12 opportunity to actually have the majority on the Sumter
13 County School Board.

14 And then also the issue about President Obama and
15 Mr. Bishop being elected. It doesn't necessarily mean
16 that the white community voted for them. They
17 certainly could go into the booth and just skip it and
18 not even vote, so, you know, you -- and when you look
19 at the exit polls on the -- on the national networks
20 and if you listen to the people that said who they
21 voted for or didn't vote for, so certainly that would
22 give some merits to -- many of them go in there and
23 don't even -- don't even, you know, vote for them. So
24 then that distorts the number.

25 **THE COURT:** Well, that could be determined,

1 couldn't it?

2 **MR. WRIGHT:** Sir?

3 **THE COURT:** You don't have to rely on
4 guessing on that. We can determine, in fact, how many
5 people actually voted.

6 **MR. WRIGHT:** Well, yeah, you can determine
7 how they voted, and then you can also -- which goes
8 back to 2006, when that's why we think we can meet that
9 standard because we have that data. Hmm, and, you
10 know, history just says that in Sumter County, Georgia
11 that if the new proposal goes into effect that it's
12 going to affect the black community in a way that will
13 send it back to 1965.

14 **THE COURT:** All right. Thank you. Of
15 course, first all, Mr. Wright, I just want to say
16 you've handled yourself well here as a pro se litigant.

17 **MR. WRIGHT:** Thank you.

18 **THE COURT:** You've been very forthright with
19 the Court and you've presented your arguments and
20 things to the Court clearly. Now, with that having
21 been said, I will say a court is a -- can be a complex
22 situation and a demanding situation for skills. As I
23 suggested earlier in the area of title, rather, Section
24 2 of the voters right act, it's a very heavy burden,
25 and it's a very complex and fact-intensive endeavor to

1 establish. So I'm not criticizing you at all. Of
2 course, if at some time you are able to acquire counsel
3 to assist you, the Court will, as I will always do,
4 encourage you to do so so that it has its best
5 opportunity to have all the facts and evidence
6 established presented that you intend to in the case
7 that you bring. Of course, the case won't be decided
8 today. We're just doing preliminary matters. Of
9 course, the case is set to proceed, and you'll have the
10 opportunity to get some assistance if you want to do
11 that, but I encourage that you do so.

12 Now, the first issue, the Court is going to issue
13 a written order, but I think since we've got an
14 election that's coming up Tuesday on the 18th of March
15 it's better the Court give an earlier decision on that
16 as it possibly can so there's really some expectation
17 on the part of the citizens, the voters, as well as the
18 candidates who are going to be involved in that
19 election.

20 Since that is for the nine-member board as was
21 indicated, as Mr. Wright has agreed, then that's not
22 inconsistent with what relief he wants, and therefore,
23 consensually, does not press for an injunction as far
24 as that election being held, and the Court further
25 finds at this late time, it would not be appropriate to

1 prevent it, in any case.

2 So the Court will decline and deny an injunction
3 preliminarily with regard to the May -- rather the
4 March 18th, 2014, election. And I will take the other
5 matter under advisement. I want to think about some
6 things and read some things, and then I will issue a
7 written order very soon with regard to the May 20th,
8 2014 matter as sought by the plaintiffs. All right.

9 **MR. WRIGHT:** Yes, sir.

10 **THE COURT:** Thank y'all very much.

11 **MR. NESMITH:** Your Honor, may I ask one
12 question?

13 **THE COURT:** Yes, sir.

14 **MR. NESMITH:** Do you want both sides to go
15 ahead do the disclosures under Rule 26? Since we're --

16 **THE COURT:** What I normally do is I will wait
17 for the answer to be filed and then issue an order, a
18 Rule 16/26 order.

19 **MR. NESMITH:** Okay.

20 **THE COURT:** Directing you all to confer and
21 then suggest to the Court a discovery schedule, and as
22 a part of that discovery schedule there is usually an
23 agreement for me to rule as to when you might exchange
24 your disclosures. At the same time now, I never
25 discourage counsel, the parties, from doing things

1 earlier if they agree to do so. But as far as being
2 required by the Court, you would not be required to
3 begin.

4 MR. WRIGHT: Sure.

5 THE COURT: Also that gives Mr. Wright -- Mr.
6 Wright, you know as representing your party, you are
7 required to --

8 MR. WRIGHT: Yes, sir.

9 THE COURT: -- meet with Mr. NeSmith.

10 MR. WRIGHT: Yes, sir, I know about that.

11 THE COURT: You have two roles. You are the
12 client and you're the lawyer. So you've got to lawyer-
13 lawyer with him, and otherwise, when necessary, act as
14 a client so. And, of course, if there is any
15 additional person as a licensed lawyer, I want you to
16 make Mr. NeSmith and the Court know that as soon as
17 possible.

18 MR. WRIGHT: Yes, sir.

19 THE COURT: All right. Thank you very much.
20 We are adjourned.

21

22 **I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT**
23 **TRANSCRIPT TO THE BEST OF MY ABILITY FROM THE AUDIO**
24 **RECORDING OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER THIS**
25 **5th DAY OF DECEMBER 2017.**

TRANSCRIBER:
s/SALLY L. GRAY, USCR,
U.S. DISTRICT COURT, MIDDLE DISTRICT OF GEORGIA